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MEMORANDUM

TO: City Council

FROM: Anna Slatinsky, Planning Division Manager

DATE: June 18, 2018

SUBJECT: Public Hearing on Appeals (APP 2018-0001, APP 2018-0002) of Director's Interpretation for OBRC Beverage Container Redemption Center (DI 2017-0003)

RECEIVED
City of Beaverton
JUN 18 2018
TIME 1:17 pm
City Recorder's Office

Planning Division received the attached comments after the City Council Agenda package was published. Staff has reviewed the materials, but the timing of the submissions does not allow for a full written response. The following parties submitted comments:

- Michael Neff, one of the appellant attorneys, submitted a memo to the Council, a summary of appeal arguments, and supporting documentation.
- Phil Donovan, Beaverton resident, submitted an email expressing support for continued operation of the Bottle Drop on Beaverton Hillsdale Highway.
- John Andersen, President of Oregon Beverage Recycling Cooperative (OBRC), submitted a letter providing information about OBRC's mission and the role of Bottle Drop establishments in State recycling policy.
- E. Michael Connors, one of the appellant attorneys, submitted a letter to Council summarizing appeal arguments.

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June 15, 2018

VIA EMAIL

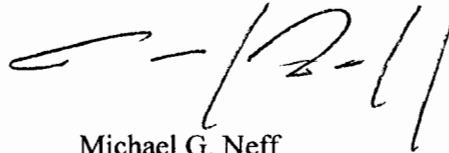
Re: Summary of Bases for Appeal in DI2017-003 (BottleDrop)

Greetings:

I write to you concerning DI2017-003, which is the appeal of the BottleDrop use determination. The BottleDrop is owned by the Oregon Beverage Recycling Cooperative, which is a privately-owned corporation. Under Oregon statute, Cooperatives may be organized and operated for any lawful purpose except for banking or insurance. I represent multiple homeowners who live next door to and across Club Meadow Road from the BottleDrop – Brandon and Holli Bridgens; Joseph Conrad; Michael Matschiner; and Trisha McPherrin. I also represent Richard Skayhan who lives in the Royal Woodlands neighborhood, and Jesuit High School.

Attached is a summary memorandum of the bases for my clients' appeal, and copies of supporting material referenced in the memorandum. If you need any additional information concerning any of the information provided in this material, I can provide it to you on request.

Very truly yours,



Michael G. Neff

MEMORANDUM

TO: Beaverton City Council Members
Lacey Beaty
Betty Bode
Mark Fagin
Cate Arnold
Mark San Soucie
and Mayor Denny Doyle

FROM: Michael G. Neff – Haglund Kelley, LLP

RE: Appeal of DI2017-003 (Illegal Use Determination for Beaverton BottleDrop)
Remand of Land Use Board of Appeals No. 2017-027 (Sept. 21, 2017)

DATE: June 15, 2018

The question before City Council – whether the BottleDrop on Beaverton-Hillsdale Highway is a “Recycling Center” as that term is used in the Beaverton Development Code (“BDC”) – appears to be a matter of first impression for the City. This question is before you because City of Beaverton planning staff determined the BottleDrop is a “Service Business” instead of a “Recycling Center.”

The regulation of land use and zoning is one of the most important functions of any city government. When a city’s zoning code states in plain language a use is not allowed, citizens should be able to trust this language and the city officials responsible for its administration. Citizens also should have a fighting chance to understand land use and zoning regulations without having to resort to costly land use attorneys.

Your decision in this case is most important to those who live, work, learn, and educate in the area surrounding the Beaverton BottleDrop. Your decision also clearly will signal whether the no-notice approach used to site and develop the Beaverton-Hillsdale Highway BottleDrop can be utilized in other parts of Beaverton to site and open other BottleDrops.

Set out below is a summary of the legal and policy bases which compel and/or support a determination by City Council that the BottleDrop is a "Recycling Center" as that term is used in the BDC.

1. "Recycling Centers" are Centers where Recycling Activities Occur

There is no debate over whether the BottleDrop is a "center." Both proponents and opponents agree the facility is by definition a center. Council must determine if the BottleDrop – a facility designed specifically as a center at which consumers, schools, businesses, and charities may recycle their beverage containers -- is a Recycling Center. (See BDC 20.15.20).

Nothing happens at a BottleDrop that is not directly part of the recycling of beverage containers. This clearly distinguishes BottleDrops from grocery store reverse vending machines. Grocery store reverse vending machines at a grocery store supermarket are classified as minor ancillary or accessory uses. BottleDrops, on the other hand, have no other function than to encourage recycling of beverage containers and to consolidate traditional grocery-store recycling at stand-alone recycling centers. People bring used beverage containers to these recycling center BottleDrops and receive cash or credit on account. The owners of the BottleDrops (the Oregon Beverage Recycling Cooperative) then sort and further process the containers before transporting them off site to another location.

So, as a center where the public is encouraged to bring beverage containers for recycling and where these containers are accepted and processed, it is plain and clear that the Beaverton BottleDrop is a Recycling Center. This conclusion should be no surprise given the policy reason behind Oregon's Bottle Bill. The policy objective, of course, is to encourage higher rates of recycling.

2. The "All the Cities are Doing it" Argument is not Persuasive

The owners of the BottleDrop submitted a document which asserts 21 out of 24 cities have approved a BottleDrop in a commercial or mixed use zoning district. Staff relies on this document for the proposition that this provides "context" that leads to the conclusion that the term "Recycling Centers" in the BDC should be read to exclude the BottleDrop.

Research into how other jurisdictions conducted land use reviews for these other BottleDrops demonstrates each ordinance is unique. This research also reveals the various levels of scrutiny applied by the jurisdictions to proposed BottleDrop sitings. Among the many lessons that can be drawn from a review of the approval processes used by the various jurisdictions, support for Beaverton using a no-notice process to approve siting in a commercial zone is not one of them.

a. Sitings Requiring Legislative Code Amendments (ALBANY and GRESHAM)

As described in Exhibit A, the Cities of Albany and Gresham required legislative amendments to their codes before approving the commercial zone sites sought by the BottleDrop owners. The Albany and Gresham legislative amendments followed a public process and rejection of initial attempts by the BottleDrop owners to site in a commercial zone.

b. Siting a “Processing Center” Following a Code Amendment (EUGENE)

Exhibit A articulates that neither the Eugene “processing center” nor a Beaverton-style BottleDrop were eligible to be sited in Eugene’s Mixed Use Employment zone until after a 2014 legislative amendment to the City of Eugene’s land use code. None of Eugene’s four commercial zones allow siting of a Beaverton-style BottleDrop.

c. Jurisdictions where Code Language Explicitly Allows Siting of BottleDrops in Commercial Zones (BEND and TIGARD)

Exhibit A identifies Bend and Tigard as jurisdictions which through legislative amendment adopted explicit language allowing siting of “beverage container redemption centers” (Tigard 2010) (See Attachment C to Exhibit A) or “redemption centers” for “empty beverage containers” (Bend 2012) in some or all commercial zones. Following adoption of these amendments, the BottleDrop owners sited Beaverton-style BottleDrops in these cities. The Bend BottleDrop is sited in a mixed employment zone, but Bend’s code allows “redemption centers” in some, but not all, commercial zones.

d. BottleDrops Sited in Industrial Zones (MEDFORD, REDMOND, and OREGON CITY)

The BottleDrops in Medford and Redmond both are sited in industrial zones. (Exhibit A). The Redmond Development Code allows “Recycling Collection Centers” outright in both Redmond industrial zones, and as a conditional use in one commercial zone. (Exhibit A). Recycling Collection Centers are not allowed in Redmond’s other five commercial zones. The City of Medford planner who worked on the BottleDrop siting there said the facility could not

have been sited in any commercial zone except the “Heavy Commercial” zone given the use classification for the facility. The Oregon City BottleDrop is sited in the General Industrial zone. (Exhibit A). Oregon City’s zoning code does not allow a Beaverton-style BottleDrop to be sited in any of the Oregon City’s commercial or mixed use zones.

e. “Freight Movement and Distribution Center” Use Classification (NEWPORT)

Newport’s planning department determined the BottleDrop use was a “Freight Movement and Distribution Center.” The Newport BottleDrop is sited as an allowed use in the City of Newport’s Heavy Commercial zone, which explicitly is intended to provide for commercial uses “frequently incompatible with retail and service commercial uses.” (Exhibit A).

f. The BottleDrop Owners Sought a Director’s Decision Before Siting (MILWAUKIE)

Faced with ambiguous language in the City of Milwaukie’s Municipal Code, the BottleDrop owners sought and received the equivalent of a Director’s Interpretation (i.e. – a Director’s Decision) before siting the Milwaukie BottleDrop. (Exhibit A) (See also Attachment A to Exhibit A).

g. The City of Salem BottleDrops are Potentially Vulnerable to a Land Use Appeal because they should have but were not Processed as Conditional Uses (SALEM)

The City of Salem Development Code’s description of “Waste-related facilities” appears to include BottleDrops. If BottleDrops are “Waste-related facilities” because they “are characterized by establishments that receive solid wastes from others,” the Salem Development Code clearly requires siting to be processed through a conditional use process. This did not happen for any of the BottleDrops now operating in Salem. (Exhibit A).

h. BottleDrops which should have been but were not Sited through the Conditional Use Process (PORTLAND and FOREST GROVE)

The City of Portland classified the two Portland BottleDrops as “recycling drop-off,” but this use classification suggests the siting should have been sited using a conditional use process. The Portland Planning and Zoning Code’s definition of “Recycling Drop-Off Center” expressly limits processing of materials on site to “glass breaking and separation.” (Exhibit A). The standard BottleDrop back end operation includes crushing and baling of aluminum cans and the perforation and/or shredding of plastic, processing activities that expressly are prohibited at a Recycling Drop-Off Center. (See Declaration of Gabe Bergeson, Ex. B). BottleDrop operations are better described by the Planning and Zoning Code’s definition of “Recycling Operation,” which in relevant parts reads “a use where one or more recycling materials are accumulated, stored, sorted, or processed.” The locations of the two Portland BottleDrops, and a third proposed Portland BottleDrop, all are in zones where a conditional use process is required for siting of a Recycling Operation. Because no such process was used (or is planned for the third BottleDrop), the siting of the Portland BottleDrops may remain open to appeal. The Forest Grove Development Code expressly provides uses which “receive solid wastes from others . . . for transfer to another location” may be sited only in an industrial zone under a conditional use process. Siting of the Forest Grove BottleDrop did not conform to this standard, and therefore likely remains subject to appeal. (Exhibit A).

i. A Future BottleDrop Likely Remains Open to Appeal (CORVALLIS)

The City of Corvallis Land Development Code defines “Scrap Operations” as the “storage or other processing of waste materials not intended for reuse in their original form.

Typical uses include . . . recycling facilities.” The City of Corvallis’s decision to approve a BottleDrop in a mixed use/commercial zone under the use category “Convenience Sales and Personal Services” likely remains subject to appeal given the definition of “Scrap Operations.” (Exhibit A).

j. The Planning Director Conceded he “Stretched” Code Language (ROSEBURG)

The City of Rosburg’s Planning Director conceded in an email response that siting of the Roseburg BottleDrop in the General Commercial zone was “probably a stretch.” (See Attachment B to Exhibit A). The Roseburg Land Use and Development Ordinance allows siting of “Recycling Centers” smaller than 5,000 square feet in the General Commercial zone, but the Roseburg BottleDrop is larger than 5,000 square feet. Given the size of the BottleDrop, siting likely should have been, but was not, noticed and deliberated on by the Roseburg Planning Commission. (Exhibit A).

k. BottleDrops which are well Sited so as to Minimize Conflict with Non-Compatible Nearby uses (SPRINGFIELD and ONTARIO)

No residential or educational uses are close to the Springfield BottleDrop site, which is located in a commercial zone immediately across the street from a large True Value Hardware distribution center. (Exhibit A). The City of Ontario Planning Director stated that no residential or educational uses are close to the Ontario BottleDrop, and that he has received no smell or noise complaints about the BottleDrop. (Exhibit A).

l. The BottleDrop Neighbors Received Notice and had the Opportunity to Challenge Site Approval (GRANTS PASS)

Unlike the siting process in Beaverton, owners of real property within 100 feet of the BottleDrop location in Grants Pass received notice of the City's "Personal Service" use classification, and were allowed the opportunity to appeal this use classification decision. (Exhibit A).

m. Planning Staff Remains Uncertain about the BottleDrop's Use Classification
(HERMISTON)

When asked about the use classification the City of Hermiston assigned to the BottleDrop, city staff stated the BottleDrop either fit "retail store" or "Secondhand store." (Exhibit A).

3. Citizens who Live, Work, Learn, Educate, and do Business in Beaverton, should have a Reasonable Expectation that the Development Ordinance will be Applied as Written

There are fundamental reasons why the City of Beaverton and other local jurisdictions in Oregon adopt zoning and development codes. Adoption of zoning and development ordinances is intended to enhance: (1) predictability and (2) public involvement. (See Ex. C., "Predictability in Planning"). Unfortunately, the process used for the siting of the Beaverton BottleDrop ignored both of these fundamental concepts.

a. Predictability

Key elements which ensure the concept of predictability in Oregon land use planning are: (1) clear policy direction; (2) protection from use conflicts; and (3) clear and objective approval standards. Because all of these elements have been absent in the Beaverton BottleDrop site approval, this matter now is before City Council.

Beaverton's Development Code clearly states Recycling Centers may be sited only in industrial zones. This is a policy direction, clearly reflected in the plain language of the BDC. If this plain language were not so clearly stated and so clearly inclusive of the BottleDrop, it would not be necessary for the Planning Division Manager to compose more than three pages of single-spaced narrative argument which relies largely on concepts and theories not reflected anywhere in the BDC. Planning staff's argument ultimately fails for what it fails to acknowledge – that the Beaverton BottleDrop's function is as a center where consumers can recycle beverage containers which by law have been made redeemable for the sole reason of encouraging recycling. To suggest such a facility is not a recycling center clearly confuses what previously had been a clear policy direction set out in the Beaverton Development Code. Adopting staff's argument does not advance clear policy direction, a fundamental element of predictability in Oregon land use planning.

It also is clear that staff's position has not reduced conflict between land uses, but rather has exacerbated and continues to exacerbate conflict. Because the use being made by the BottleDrop owners of the site is incompatible with established residential and commercial uses on surrounding properties, none of the Beaverton BottleDrop's immediate neighbors approve of the city's siting decision. This also is true of multiple other nearby property owners. This opposition is rooted in the impact from odor and noise resulting from operation of the BottleDrop and the safety issues created by centralizing the return of more than 80,000 containers a day into one facility. This use and accompanying impacts are incompatible with nearby residential, educational, and commercial service uses. Establishing the precedent that all

areas of all Beaverton commercial zones are available for BottleDrops and other similar uses, only will exacerbate further conflict in other parts of Beaverton.

The Beaverton BottleDrop's owners knew at the time they approached the City of Beaverton that they were asking the city to allow siting under a standard that was not "clear and objective." The owners also knew the siting would be controversial. Both of these conclusions are natural inferences given the owner's experience siting BottleDrops in other jurisdictions. Despite this knowledge, the BottleDrop's owners encouraged the city to ignore the Development Code's plain language and instead apply the vague term "Service" business without any meaningful opportunity for public input. (See Ex. D, communication from OBRC to City of Beaverton Senior Planner Scott Whyte). To protect both the general public and future developers, City Council should reject this approach to application of the Beaverton Development Code. Eschewing clear and objective standards in favor of a more subjective reading of the code does great harm to the goal of predictability.

b. Citizen Involvement

The decision by city planning staff and the BottleDrop owners to use an approach which did not allow for public input in the BottleDrop siting decision is contrary to the other major goal of land use planning in Oregon – citizen involvement. The record is clear that the "Public Service" use determination was made as a ministerial Type 1 decision (See Ex. E), which requires no actual notice to nearby landowners and which is designed for land use decisions in which no judgment or discretion is applied.

City Council should be wary of any attempt by the BottleDrop owners to suggest the Oregon Legislature intended to limit the citizen involvement in the siting of BottleDrops when it approved the centralization of beverage container recycling and redemption. Nothing in state statute or administrative rule suggests that local development codes are preempted as a matter of law by the 2011 amendments to the Bottle Bill. Several cities have responded to the concepts set out in the Legislature's 2011 Bottle Bill amendments by invoking a legislative code review process and allowing their citizens to participate in the policy decision of where BottleDrops can be sited. The Cities of Tigard, Bend, Gresham, Albany, and Eugene all explicitly amended their development codes to make special provision for where BottleDrops can be sited. Tigard and Bend explicitly used the terms "beverage container redemption center" and "redemption center." If the 2011 amendments were preemptive as a matter of law, the action by these five cities would not have been unnecessary.

It is also true that nothing in the 2011 amendments prohibit a local jurisdiction from promulgating standards as to where and under what conditions BottleDrops may be sited. If jurisdictions like Beaverton want to allow BottleDrops in commercial zones, either with or without conditional use authority, the preferred approach is one that provides for citizen participation. The classic example of such an approach is the legislative amendment process used in Tigard, Bend, Gresham, Albany, and Eugene.

While legislative amendment is preferred, a Director's Interpretation type of process at least provides an opportunity for some public involvement via notice to Neighborhood Association Committees and landowners whose boundaries or properties are located within 300 feet of the property targeted for development. (See BDC 50.40). For planning to be protective

of developers and the public, Beaverton's Development Code explicitly states that requests for Director's Interpretations should be made prior to or concurrent with applications for development. (See BDC 40.25).

It is a reasonable inference given how the BottleDrop's owners have sought to permit BottleDrops in other jurisdictions, that in Beaverton the BottleDrop owners made a deliberate decision to avoid seeking a Director's Interpretation so neighbors and other members of the public could not participate in the siting decision. This approach by the BottleDrop owners, coupled with the fact that the owners chose to continue buildout after a neighboring property owner raised issues and filed a land use appeal, demonstrate a lack of prudence by the owners and a lack of respect for the reasonable opinions of neighboring residents, businesses, and property owners. The neighboring residents and property owners who bring this appeal should not be punished by the BottleDrop owners' failure to seek a timely Director's Interpretation and their decision to push ahead after filing of an appeal against the project.

4. Citizens who Live, Work, Learn, Educate, and do Business in Beaverton, should have a Reasonable Expectation Beaverton Officials will Interpret the Development Code Conservatively to Minimize Conflicts Between Land Uses

Appellants do not concede on the facts before City Council that the BottleDrop, a centrally-located facility which is designed and operated for the purpose of facilitating the recycling of 80,000 beverage containers daily, is not included in the term "Recycling Center" as set out in the BDC. If, however, the City Council were faced with a case where the language of the BDC is genuinely open to reasonable competing interpretations, appellants submit the proper approach is to interpret the BDC in a conservative manner which favors public participation and

careful deliberation. The basis for such a policy is clearly expressed in the process the BDC sets out for resolving questions of interpretation.

Section 40.25 of the BDC establishes a “Director’s Interpretation” process which specifically is designed “to address new uses which may come into existence over time that are not addressed specifically in the Code” or when terms or phrases within the Code “may require further interpretation.” Section 40.25 also specifically states the Director’s Interpretation process is intended to resolve BDC interpretation issues “in advance of, or concurrent with” action on an application or permit.

Section 40.25 must be read in context with Section 10.50. Section 10.50 of the BDC provides when a use “not specifically named” in the allowed uses for a zone is proposed, the use is not allowed unless the use is approved as a similar use through the Director’s Interpretation process of Section 40.25. Section 10.50 also provides that uses already allowed in another zoning district cannot be approved as a similar use in another zoning district.

Read together and properly construed, the language of Section 40.25 and Section 10.50 make clear that: (1) Beaverton has a process to address uses that for any number of reasons are not specifically described in the BDC; (2) the BDC sets out clear direction that the process is to be utilized to resolve issues of interpretation before the city makes a final decision on whether or not a use is allowed; and (3) that the process cannot be used to approve a use that is specifically described as allowed in another zone.

Unfortunately, for Beaverton residents and others who live close to the BottleDrop, the Director’s Interpretation process now is being used in way that violates the BDC. In the case

before City Council, staff made a final decision on use without using the Director's Decision process even though: (1) the BottleDrop clearly is a center for recycling and "Recycling Centers" specifically are allowed in the BDC's General Industrial zone; (2) the term "Recycling Centers" is a more apt description of a BottleDrop than the term "Service Business"; and (3) the term "Recycling Centers" is a more specific term than "Service Business."

Choosing to ignore the plain language of a specific use term in order to categorize the BottleDrop under a more general term without first using the Director's Interpretation process required by the BDC cannot reasonably be viewed as a conservative application of the BDC designed to protect citizens from the conflict caused when incompatible uses are in proximity. While a legislative approach to the issue before City Council clearly is the preferred approach, the BDC at a minimum should require an approach where nearby property owners are given notice and allowed the opportunity to provide input before a final decision is made and development then moves forward.

5. Conclusion

This is a clear case of why the opportunity to appeal is so important. Humans are fallible. Sometimes mistakes are made. Without the right of appeal to both the Land Use Board of Appeal and City Council, no opportunity would be available to rectify the mistakes that have resulted in continuing harm to those who work, live, learn, educate and do business in the area surrounding the BottleDrop. Without the right to appeal, citizens who work, live, learn, educate, and do business in other areas of Beaverton also will be vulnerable to a BottleDrop being sited without notice even if the chosen locations is incompatible with existing surrounding uses.

Exhibit D and the research summarized in Exhibit A demonstrate that the BottleDrop owner's approach, especially with its more recent development applications, has been to encourage local planning staff to find a way to site these facilities in commercial zones where no land use process is required. This includes avoiding any code requirement to provide surrounding property owners with actual notice or a process requiring condition use approval. As demonstrated aptly by the facts before City Council, this no-notice siting in a commercial zone occurred in Beaverton without concern for the impact on existing surrounding uses.

The Beaverton Development Code clearly does not sanction such an approach on these facts. The right response for City Council is to reject staff's proposed reading of the BDC and to apply the BDC's plain language. Application of the BDC's plain language will result in the BottleDrop's owners being required to site their project as a conditional use in an area zoned Industrial. This result comports with Oregon land use caselaw and protects citizens who live, work, learn, educate, and do business in Beaverton -- both in the immediate affected area and other parts of Beaverton. By affirming the plain language of the BDC, City Council also furthers the important policies behind why local governments adopt zoning codes -- predictability and public involvement.

Lastly, is it important to make clear that appellants do not oppose the BottleDrop program. Appellants' opposition is limited to the no-notice siting of the BottleDrop in Beaverton in a way that negatively impacts the surrounding neighborhood and in a location that is contrary to the plain language of the BDC. Enforcing the BDC as written will allow the BottleDrop owners to find another location in Beaverton to operate, and will protect the neighbors of the

Beaverton BottleDrop who are affected in varying degrees by the odor, noise, safety and security issues that illegal siting of the BottleDrop has created.

Exhibit A

| REDEMPTION CENTER | ZONING DESIGNATION | LAND USE SUMMARY |
|---|------------------------------------|--|
| Albany 2141 Santiam Hwy S.E. | CC – Community Commercial | Albany rejected the OBRC's initial proposed location in the Main Street (MS) zone. OBRC obtained a legislative amendment to the Albany Development Code that recognized "redemption centers," allowed this new use in the Community Commercial (CC) zone and sited its facility. |
| Beaverton 9307 S.W. Beaverton-Hillsdale Hwy | CS – Community Service | To be determined by the Beaverton City Council |
| Bend 755 N.E. 2 nd Street | ME – Mixed Employment | The Bend BottleDrop is well buffered from residential and educational uses. Since 2012, the Bend Municipal Code included "redemption center" as a defined term and use, and allowed redemption centers in the Mixed Employment (ME) zone. "Redemption center(s)" are <u>not</u> allowed in the Convenience Commercial District (CC), which is intended to serve uses "larger in scale and area than neighborhood commercial uses and provide for frequent shopping and service needs of nearby residents." Redemption centers are allowed as of right in Bend's Light Industrial District. |
| Corvallis 1111-B N.W. 9 th Street | MUS – Mixed Use Community Shopping | This facility is not yet open. Corvallis planning staff determined the use was a "Personal Service" use without using a formal process. No land use appeal has yet been made, but given the language of the Corvallis Land Development Code, an appeal under LUBA's decision in <u>Glenwood 2006, LLC</u> might be successful given the definition of "Scrap Operation" in the Corvallis Land Development Code. The definition of "Scrap Operation" explicitly includes "recycling facilities." |

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| Eugene 2105 W. Broadway | E-2 – Mixed Use Employment | The Eugene BottleDrop is part of a 27,000 square-foot plant the OBRC refers to as a “processing center.” Neither this plant, nor a Beaverton-type BottleDrop, could have been sited in the Mixed Use Employment zone until approval of a 2014 legislative amendment to the Eugene land use code. A Beaverton-type BottleDrop is too large to be sited in any of Eugene’s four commercial zones. |
| Forest Grove 2933 Pacific Avenue | CC- Community Commercial | This facility was allowed pursuant to A Land Use Compatibility Statement, without notice or a public process. A future appeal of the authority to site this existing BottleDrop in a commercial zone might succeed under LUBA’s decision in <u>Glenwood 2006, LLC</u> , given the express language of the Forest Grove Development Code that uses which “receive solid . . . wastes from others . . . for transfer to another location” must be sited in the Industrial zone using a conditional use process. This BottleDrop is well-buffered from other residences and educational facilities. |
| Grants Pass 1040 Rogue River Hwy | GC – General Commercial District | Owners of real property within 100 feet of this site received notice prior to approval of the site and were provided an opportunity to challenge the “Personal Service” use classification. Unlike the Beaverton Development Code and codes of many other jurisdictions, the Grants Pass Development Code does not identify “recycling centers,” “recycling facilities,” “recycling transfer stations,” or “waste-related activities” as an allowed use in any zone. |
| Gresham 1313 E. Powell Boulevard | DCL – Downtown Commercial Low-Rise | Similar to the Beaverton Development Code’s treatment of “Recycling Centers,” the Gresham |

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| <p><i>(See Attachment A, which is a copy of the Final Order by Gresham Hearings Officer Joe Turner)</i></p> | | <p>Community Development Code did not explicitly define "Recycling facilities." The City denied the initial attempt to site the Beaverton-style BottleDrop in a commercial zone pursuant to the city hearings officer's conclusion it met the definition of "(r)ecycling facilit(y)" and required Type III process. Siting did not occur until after City Council adopted legislative code amendments allowing the OBRC to site in a commercial zone using only a Type 1 ministerial review. The OBRC characterized its use in Gresham -- which is a Beaverton-style BottleDrop -- <u>not</u> as a personal service to consumers, but as a "retail service" to grocery stores.</p> |
| <p>Hermiston 740 W. Hermiston Avenue</p> | <p>C-2 – Outlying Commercial</p> | <p>This BottleDrop, which serves only five grocery stores, was classified as a "Secondhand store" and/or a "retail store" under the City of Hermiston's Land Usage Code. Unlike the Beaverton Development Code, Hermiston's code does not include the terms or define "recycling centers," "recycling facilities," "recycling transfer stations," or "waste-related activities" as examples of industrial uses.</p> |
| <p>Klamath Falls 2702 Eberlein Avenue</p> | <p>GC – General Commercial</p> | <p>The Land Use Compatibility Statement for the Klamath Falls BottleDrop was signed by a Planning Manager who no longer works for Klamath Falls. OBRC states that Klamath Falls classified the use as "Personal Services," which at the time was an undefined allowed use in the General Commercial zone. The Klamath Falls code does not include the terms or define "recycling centers," "recycling facilities,"</p> |

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| | | “recycling transfer stations,” or “waste-related activities” as examples of industrial uses. |
| Medford 1179 Stowe Avenue | LI – Light Industrial | The Light Industrial zone in the Medford Land Development Code “is intended for industrial uses which involve the lowest level of noise, vibration, air pollution, radiation, glare, or fire and explosive hazards.” The City of Medford planner who worked with OBRC explained that the use as Standard Industrial Classification (SIC) 5093, which describes establishments primarily engaged “in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials.” This BottleDrop is well buffered from residential and educational uses. |
| Milwaukie 6106 S.E. King Road | C-G – General Commercial | Prior to siting of the Milwaukie BottleDrop, the OBRC sought and received a formal written Director’s Decision (a process directly analogous to a Director’s Interpretation) which interpreted Milwaukie’s Municipal Code. The Director’s Decision concluded Milwaukie’s BottleDrop is consistent with the list of permitted uses allowed in the General Commercial zone. The Director’s Decision, issued May 20, 1996, also found the comparison between the proposed BottleDrop and the permitted use in the General Commercial zone “is not obvious . . . and a formal determination is needed.” This was shortly before the OBRC approached City of Beaverton staff. |
| Newport 158 E. Olive Street | C-3 – Commercial Heavy | Newport Municipal Code’s C-3 Heavy Commercial zone is intended “to provide for commercial uses that are frequently incompatible with retail and service commercial uses. The City |

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| | | determined the BottleDrop qualified as a "Freight Movement and Distribution Center," which is an allowed use in the C-3 zone. |
| Ontario 1383 N.E. 3 rd Avenue | C2H – City Heavy Commercial | The Ontario Planning Director reports that the Ontario BottleDrop is well buffered from residential and educational uses. The Planning Director also reports, that although the Ontario BottleDrop has reverse vending machines, most Ontario grocery stores have ancillary use drops spots from which the OBRC picks up patrons' green bags and delivers them to the BottleDrop |
| Oregon City 14214 First Street A&B | GI – General Industrial District | This -General Industrial (GI) zone is designed to "allow uses relating to manufacturing, processing, production, storage, fabrication and distribution of goods." Sited in an industrial zone, the Oregon City BottleDrop is well buffered from residential and educational uses. |
| Portland Delta Park 1176 N. Hayden Meadows Drive | CG – General Commercial | This BottleDrop is sited in a General Employment 2 (EG2) zone, which is oriented towards "industry and office uses." Given the City of Portland's Planning and Zoning Code definition of "Recycling Drop-Off Center," it appears this use should be processed as a Type III Conditional Use. An appeal under LUBA's decision in <u>Glenwood 2006, LLC</u> might be successful. |
| Portland Glisan 12403 N.E. Glisan Street | CG – General Commercial | The City of Portland appears to have determined BottleDrops qualify as "recycling drop-off" and thus a Commercial "Retail Sales and Service" use. Given the details of the backend operations for a typical BottleDrop, this use conclusion directly conflicts with the Portland definition of "Recycling Drop-Off Center." Given the |

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| | | definition of "Recycling Operation" in Portland's Land Use and Zoning Code, it appears this use should have been processed as a Type III Conditional Use. An appeal under LUBA's decision in <u>Glenwood 2006, LLC</u> might be successful. |
| Redmond 1204 S.E. Lake Road | M-2 – Heavy Industrial | Although sited in an industrial zone, Redmond's BottleDrop, like the Oregon City and Medford BottleDrops, has multiple "retail-type" reverse vending machines. On total volume, more containers are processed at the next closest BottleDrop in Bend. This BottleDrop is well buffered from residential and educational uses. |
| Roseburg 740 N.E. Garden Valley Boulevard <i>(See Attachment B, which is an email from Rosburg Planning Director Stuart Cowie)</i> | C3 – General Commercial | Roseburg's Planning Director conceded -- given the language of the Roseburg Land Use and Development Ordinance -- that siting of the BottleDrop in the General Commercial was "probably a stretch, but it worked." This BottleDrop is well-buffered from other nearby uses. An appeal under LUBA's decision in <u>Glenwood 2006, LLC</u> might be successful here. |
| Salem Lancaster 1917 Lancaster Drive N.E. | CR – Retail Commercial | According to the OBRC, the City of Salem classified this BottleDrop as a Personal Service commercial use, even though Salem Development Code appears to define this use as a "Waste-related facilit(y)." Some Waste Related Facilities require conditional use review and others are not allowed when proposed in a Retail Commercial zone. An appeal under LUBA's decision in <u>Glenwood 2006, LLC</u> might be successful. |
| Salem Northeast 1880 Commercial Street N.E. | CG – General Commercial | The City of Salem classified the Salem Northeast BottleDrop as a Retail commercial use. The |

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| | | OBRC asserts the use at this location fits the "Personal Use" Retail subcategory. The Salem Development Code appears to define this use as a "Waste-related facilit(y)." "Recycling depots" – which by definition must be less than 1,000 square feet – are a "Waste-related facilit(y)" and an allowed use in the General Commercial zone, but the Salem Northeast BottleDrop at 9258 square feet does not qualify. All other "Waste-related" facilities are not permitted in the General Commercial zone, with the exception of "Solid waste transfer stations" when approved through the conditional use process. |
| Salem South 4815 Commercial Street S.E. | CR – Retail Commercial | According to the OBRC, the City of Salem classified this BottleDrop as a Personal Service commercial use, even though Salem Development Code appears to define this use as a "Waste-related facilit(y)." Some Waste Related Facilities require conditional use review and others are not allowed when proposed in a Retail Commercial zone. An appeal under LUBA's decision in <u>Glenwood 2006, LLC</u> might be successful. |
| Springfield 2289 Olympic Street | Major Retail Commercial | The Springfield BottleDrop is sited in a retail area located directly across the street from property in a True Value Hardware distribution center which is sited in a Light-Medium Industrial zone. No residential or educational uses are found nearby. |
| Tigard 14411 S.W. Pacific Hwy <i>(See Attachment C, an excerpt from the Tigard Community Development Code)</i> | CG – General Commercial | In 2010, the Tigard Community Development Code expressly designated "beverage container redemption centers" as a Commercial Personal Service use allowed in all Commercial base zones. This BottleDrop site was approved as a |

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| | | Commercial Personal Service use based on that express definition. |
| Wood Village 23345 N.E. Halsey Street | NC – Neighborhood Commercial | The Wood Village Zoning and Development Code does not define “recycling centers,” “recycling facilities,” “recycling transfer stations,” or “waste-related facilities” as examples of industrial uses. Given this, Wood Village planners determined the BottleDrop was “recycling drop-off” and thus specifically allowed in the Commercial zone. |

Attachment A

**BEFORE THE LAND USE HEARINGS OFFICER
OF THE CITY OF GRESHAM, OREGON**

| | | |
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| Regarding an appeal by Oregon Beverage Recycling |) | <u>FINAL ORDER</u> |
| Cooperative of the planning manager's interpretation |) | LTRS 09-26000179/AH |
| that a beverage container redemption center is a Type III |) | (Oregon Beverage |
| Community Service Use in the City of Gresham, Oregon |) | Recycling Cooperative) |

A. SUMMARY

1. On July 23, 2009 Oregon Beverage Recycling Cooperative (the "applicant") submitted a letter requesting an interpretation that a beverage container redemption center is a Retail Service Use, not a Community Service Use under the Gresham Community Development Code (the "CDC"). Exhibit C. On September 4, 2009 the City development planning manager (the "manager") issued a Type I Staff Decision, File No. LTRS 09-26000179 finding that a beverage container redemption center is a Type III Community Service Use. See Exhibit B. The applicant filed an appeal of the manager's decision on September 16, 2009. Exhibit A.

2. Hearings Officer Joe Turner (the "hearings officer") conducted a *de novo* public hearing regarding the appeal. County staff recommended that the hearings officer deny the appeal and affirm the director's decision. See the "Appeal to the Hearings Officer Findings and Recommendation" (the "Staff Report"). The applicant's attorney testified in support of the appeal. Two other persons testified orally in opposition to the appeal. Other persons testified in writing.

3. Based on the findings and discussion provided or incorporated herein and the public record in this case, the hearings officer hereby denies the appeal and affirms the manager's decision in LTR 09-26000179 (Oregon Beverage Recycling Cooperative).

B. HEARING AND RECORD

1. The hearings officer received testimony at the duly noticed public hearing about this appeal on October 22, 2009. The testimony and evidence, including an audiotape of the public hearing and the caselfile maintained by the City are included herein as exhibits, and they are filed at the City of Gresham. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts with interested persons, bias or conflicts of interest. The following is a summary by the hearings officer of selected relevant testimony at the hearing.

2. Senior City Planner Ken Onyima summarized the Staff Report and the manager's decision.

a. He noted that CDC 8.0112 lists Type III Community Service Uses. CDC 8.0112.W lists "Recycling facilities, including drop-box transfer stations, transfer stations, recycling collection sites, and recyclables recovery facilities." The Code does not define the terms "recycle" or "recycling center." CDC 3.0001 provides "Terms not

defined here shall have their ordinary accepted meaning as identified in the latest edition of Webster's Dictionary of the English Language." Webster's dictionary defines "recycle" as "to treat or process in order to use again (recycle aluminum cans)."

b. He argued that the beverage container redemption center proposed by the applicant is a recycling facility as defined by the Code. Customers of the facility will bring recyclable containers to the site. The applicant's employees will process the containers, compacting and packaging them for shipment to another facility for further processing.

c. He testified that the City also relied on the definition of "recycling center" in the *A Planners' Dictionary, American Planning Association, 2004* (the "Planner's Dictionary") as evidence of how other jurisdictions treat this type of facility.

d. He argued that the applicant's reliance on the term "redemption centers" in ORS 459A.735(1) is misplaced. The Code requires that words that are not defined by the Code have the meaning established in the dictionary definition. The Code does not allow reliance on definitions in state law.

e. He argued that the facility does not fit into the CDC's definition of "commercial development," "retail service," or "retail trade." The facility does more than merely returning deposits to customers in exchange for containers. The facility will collect, compact, and store containers prior to shipping them to another facility for recycling. Therefore it constitutes a recycling facility, which is a Type III Community Service Use pursuant to CDC 8.0112.W.

f. He argued that the facility is consistent with the definition of a Community Service Use in CDC 3.0010 and 8.0101. CDC 3.0010 defines "Community Service Use" as:

Public, semi-public, and certain private and non-profit uses that primarily serve the general public and are generally permitted in most land use districts. Community Services include public and private schools, churches, government facilities, utilities, cemeteries, parks, and other similar uses as listed in Section 8.0100 – Community Services.

CDC 8.0101 provides:

In addition to development intended for a land use district, there are community services that are appropriate in a particular area because of social or technical needs.

The proposed redemption center will fulfill a social need for recycling of empty beverage containers in fulfillment of the Oregon Bottle Bill.

g. He argued that the definition of the facility is not dependant on the state agency that permits it, the size of the facility nor whether it is indoors or outdoors.

h. He noted that most existing redemption facilities are located within or on the site of existing retail stores. These facilities are accessory to the primary use of the properties for retail or commercial sales. This facility is a separate, freestanding facility that will serve multiple stores.

i. The proposed redemption facility would still require City review if it were located in the parking lot of the nearby Safeway store, because it is intended to provide redemption services for four different stores, not just the single Safeway store. He compared the existing redemption facilities to private preschools associated with churches. A preschool that only served members of the church would be accessory to the church. This is similar to the existing redemption facilities located within or on the site of retail stores and is only intended to fulfill the redemption requirements of that store. A preschool that was available to the general public would be a separate use, requiring separate City approval, similar to the proposed redemption facility that is intended to serve four different stores.

3. City development planning manager Ann Pytynia noted that CDC 8.0112.W includes a variety of different types of recycling facilities, including drop-box transfer stations, transfer stations, recycling collection sites, and recyclables recovery facilities.

a. She argued that the redemption facility will provide a service to the public by making it easier to redeem containers. The applicant proposed to offer a variety of redemption methods and the facility will accept containers from all manufacturers, making it easier for consumers to redeem their containers. Therefore the facility is consistent with the definition of community service use.

4. Attorney Damien Hall testified on behalf of the applicant, Oregon Beverage Recycling Cooperative.

a. He summarized the requirements of the "Oregon Bottle Bill" (the "Bottle Bill"). The Bottle Bill requires that retailers require collect a deposit on beverage containers sold by the retailer and that those retailers accept returns of empty containers and refund the deposit. The initial impetus for the Bottle Bill was litter control, not recycling. The Bottle Bill does not mention the term "recycle" and it does not specify any particular method for processing returned containers. If they chose, retailers could simply discard the containers as solid waste. ORS 459A.735 authorizes the creation of "redemption centers" to receive returnable containers and refund deposits, fulfilling the requirements of the Bottle Bill.

b. He argued that a redemption center is a retail service use as defined by CDC 3.0010. The primary purpose of a redemption center is to provide a service, accepting the return of beverage containers, in exchange for money, return of the original deposit. The proposed redemption center will provide a retail storefront for redemption services. The redemption process is simply the completion of the retail transaction that

began with the sale of the beverage by the retailer. The public receives "value" from such transactions by reducing litter and solid waste, keeping beverage containers off of the streets and beaches. The facility is similar to a pawnshop, where customers exchange their personal goods for cash.

i. If the proposed facility is determined to qualify as a recycling facility, it would be more accurate to compare it to a newspaper drop box, a Type I community service use, rather than a collection facility, a Type III community service use. The facility is free and open to the general public.

c. He argued that Staff's interpretation of the redemption center as a recycling center is "overly broad." The redemption of beverage containers is a statutorily controlled process. The facility will not function as a recycling center. The applicant will not process containers on the site. The applicant will merely collect containers and store them no longer than overnight before shipping them to another facility for recycling. Under Mr. Bildsoc's interpretation, any step in the manufacturing process could be considered a "recycling center." The City should construe the term "recycling" to apply only to locations where materials are actually processed for recycling.

i. The proposed redemption center is different from a metal recycling facility that pays for recyclable metals. A metal recycling facility is not regulated by statute, is not limited to the types of materials it can accept and there is no connection to a prior retail transaction. A redemption center is created by statute that expressly limits and defines the types of containers that may be received. The redemption center operator is returning the customer's deposit, completing the retail process that began with the sale of the beverage by a retailer.

d. He argued that the purpose of the redemption center is inconsistent with the definition of "community service use" in CDC 3.0010. Community service uses are intended to "primarily serve the general public." The statutory purpose of the redemption center is "[t]o serve dealers of beverages..." ORS 459A.735(1). The facility is intended to provide a service to retailers, not the general public. The applicant is a for-profit cooperative. Members of the co-op pay a fee to fund the facility and eliminate the need to provide redemption services at their individual stores. In addition, any person may establish a redemption center. Whereas community service uses are generally limited to public and non-profit uses, "[a]ny person may establish a redemption center." *Id.*

e. He asserted that Staff's argument that the redemption facility qualifies as a community service use because it is necessary to fulfill a public need is overly broad. Under this interpretation, any beneficial development could arguably constitute a community service use. All retail uses provide some public benefit by offering goods to consumers, fulfilling their needs for those goods.

f. He noted that Senate Bill 707 requires that all retailers accept all deposit containers, regardless of brand. Therefore the assertions by Staff and Ms. Rulla that the proposed facility is different from existing redemption centers are incorrect.

g. He testified that the proposed redemption facility is not the only option for consumers to return their containers. This facility will only replace the redemption facilities at four stores. 29 existing redemption facilities will remain available within a 1.5-mile radius of this facility.

h. He introduced a "letter to the editor" of the Gresham Outlook written by the Gresham City Council, expressing support for the proposed redemption facility. Exhibit 2.

5. Carol Rulla argued that a redemption center is a recycling facility. The applicant's name, "Oregon Beverage Recycling Cooperative," includes the word "recycling." She argued that the type of use should be determined based on the activities occurring on the site. In this case, the applicant proposes to accept beverage containers for recycling. Although the Code does not list "redemption centers" as a use, the Code requires that it be reviewed as the most similar use. A redemption center is similar to a recycling facility and therefore should be reviewed as a community service use.

a. She argued that the proposed facility will require additional vehicle trips. Currently customers can combine their bottle returns with other shopping, because the redemption facility is accessory to the retail use. This freestanding facility must be reviewed as an independent freestanding facility.

b. She opined that the proposed facility is different than the existing redemption facilities within retail stores. Existing facilities only accept containers for products sold by the store where the redemption facility is located. This facility will accept containers from all retailers. Therefore it will draw from a larger community, not just persons who shop at a particular store. Because the facility will serve the entire community, it is similar to a church or school and therefore should be reviewed as a community service use.

c. She argued that the proposed facility will provide a service to the community. This facility will replace the existing redemption facilities in four stores. It will be the only place that consumers can return their containers.

d. Whether the purpose of the facility is litter control or recycling is irrelevant. Litter control and recycling are both services that benefit the community.

e. She argued that the redemption facility is different from a pawnshop. A pawnshop purchases goods that have value to the owner and resells those goods to other consumers. Unlike a pawnshop, the redemption facility operator is not purchasing the cans from the consumer. The operator is merely returning a deposit. Empty beverage containers have no value to the owner; they are a waste product to be disposed of. The empty containers have no further use, other than as a source of recyclable material.

6. John Bildsoe argued that recycling and retail are not mutually exclusive. Recycling is an ongoing process. Recycling starts with the purchase of a manufactured good. Once the manufactured good is used up, it must be discarded or recycled. Recycling

returns the product to the manufacturing stream where it can be turned into another usable good that can be sold again. The container deposit is similar to a sales tax, not a retail transaction.

7. At the end of the hearing, the hearings officer ordered the record held open for one week to allow the applicant to submit additional testimony and evidence into the record. The hearings officer held the record open for a second week to allow staff and the public to respond to the applicant's submittals and for a third week to allow the applicant to submit a final argument without any new evidence. The record in this case closed at 5:00 p.m. November 12, 2009.

C. DISCUSSION

1. CDC 11.0520(A) authorizes the hearings officer to hear appeals of planning manager decisions as a *de novo* matter. The hearings officer is required to conduct an independent review of the record and is not bound by the prior determination of the manager in any way.

2. When interpreting the City's ordinances the hearings officer is required to follow the rules of statutory construction set out in the Oregon Supreme Court's decision in *Portland General Electric v. Bureau of Labor and Industries*, 317 Or. 606, 859 P2d 1143 (1993) (*PGE v. BOLL*) as modified by *State v. Gaines*, 346 Or 160, 171-172 (2009). The hearings officer must attempt to discern the intent of the City Council from the text and context of the ordinance and related ordinances and the legislative history of the ordinance. "If the [City Council's] intent is clear from such analysis, further inquiry is unnecessary." *PGE v. BOLL* at 610. "A court need only consider legislative history 'for what it's worth' — and what it is worth is for the court to determine." *Gaines* at 346 Or. 171.

3. In this case, the hearings officer finds that the relevant text and context is Article VIII. "Community Services" and the definitions in Article III.

a. CDC 8.0101 "Community Service" provides:

In addition to development intended for a land use district, there are community services that are appropriate in a particular area because of social or technical needs. The approval of a community service is for a specific use. Any change or expansion of a use approved under the Type II procedures shall be subject to approval of the Manager.

b. CDC 8.0110 "Type I Community Services" provides, in relevant part:

The following community services may be approved under the Type I procedure:

- A. Recycling drop box when located in a commercial or industrial land use district and where the box is located not closer than 500 feet of a residential structure....

c. CDC 8.0112 "Type III Community Services" provides, in relevant part:

The following community services may be approved under the Type III procedure:

...

- W. Recycling facilities, including drop-box transfer stations, transfer stations, recycling collection sites, and recyclables recovery facilities.

d. CDC 3.0001 provides:

The purpose of Article 3 is to define terms that are used frequently in the City of Gresham Development Code (Code) and to assist decision makers in interpreting and applying the Code. Those words used in the Community Development Code, shall be subject to the generally accepted dictionary definitions, unless otherwise noted in Section 3.0010. Those words listed in Section 3.0010 shall be subject to those definitions provided, unless the context clearly implies differently. In such cases, the context in which a term is used will indicate its intended meaning, and that intent shall control. Terms not defined here shall have their ordinary accepted meaning as identified in the latest edition of Webster's Dictionary of the English Language.

e. CDC 3.0010 provides the following relevant definitions:

Commercial Development. Offices and clinics; retail trade establishments engaged in selling goods or merchandise to the general public for personal or household consumption; retail services establishments providing services or entertainment to the general public such as eating and drinking places, hotels, banks, theater; business establishments engaged in rendering services to other businesses on a fee or contract basis, such as advertising, data processing, employment services, and consulting services.

Community Services. Public, semi-public, and certain private and non-profit uses that primarily serve the general public and are generally permitted in most land use districts. Community Services include public and private schools, churches, government facilities, utilities, cemeteries, parks, and other similar uses as listed in Section 8.0100 – Community Services.

Commercial Development. Offices and clinics; retail trade establishments engaged in selling goods or merchandise to the general public for personal or household consumption; retail services establishments providing services or entertainment to the general public such as eating and drinking places, hotels, banks, theater; business establishments engaged in rendering services to other businesses on a fee or contract basis, such as advertising, data processing, employment services, and consulting services.

Retail Service. Establishments providing services or entertainment such as eating and drinking places, hotels, banks, catering, laundromats, hair salons, barber shops, arcades, photo finishing, watch and jewelry repair, and theaters. Of note, professional offices (including lawyers, consultants, financial, engineering, and real estate) that provide services for a fee may be classed as either a retail service or an office use.

Retail Trade. Establishments engaged in selling goods or merchandise for personal or household consumption such as clothing, groceries, hardware, gifts, appliance, computer, telephone stores, and other sales of goods to the end user.

4. The hearings officer finds, based on the text and context of the Code, that the proposed redemption facility is not a “retail trade” establishment as defined by CDC 3.0010. The facility will not sell goods or merchandise for personal or household consumption. The facility will receive “goods” – empty containers – from consumers.

5. The hearings officer further finds that the facility is not a “retail service” establishment as defined by CDC 3.0010.

a. The hearings officer finds that the proposed redemption facility is not “of the same kind” as the retail service uses listed in the definition. “When the legislature uses ‘nonspecific or general phrases’ as well as a list of items, this court, under the principle of *ejusdem generis*, construes the statute ‘as referring only to other items of the same kind.’” *Liberty v. State Dept. of Transportation*, 148 P.3d 909, 913, 342 Or. 11 (2006). In other words, general words following an enumeration of specific things are usually restricted to things of the same kind as those specifically enumerated. In this case, the general words “Establishments providing services or entertainment...” are followed by a list of specific uses.

i. The proposed redemption facility will provide a service to the public; facilitating the return of empty beverage containers in exchange for the deposit paid when the beverage was purchased.

ii. However the operation of the proposed redemption center is functionally different from all of the specific uses included in the definition. All of the

uses listed in the definition of “retail service,” restaurants, banks, repair facilities, etc., provide a service in exchange for money from the consumer. At the proposed redemption center money flows in the opposite direction, from the operator to the consumer; the operator will pay customers (refunding the deposit) for returning their beverage containers. Therefore the hearings officer finds that the proposed redemption facility does not constitute a “retail service” establishment as defined by CDC 3.0010, because it is different in kind from the listed uses.

b. The applicant argues that the redemption center is a “retail service” use because “[t]he function of the redemption center is to complete a retail transaction by returning to the consumer the five-cent deposit paid on each container at the time of purchase,” P 4 of Exhibit A.” However there is no requirement that the person returning the empty container is the same person involved in the original purchase of the beverage. The person returning the container may have picked it up from the side of the road or purchased it from a retailer other than the four served by this facility, in which case the person returning the container would have no prior connection with the retailers served by the facility.

c. The applicant notes that the City did not require permits for existing redemption facilities “beyond the permits required for the overall grocery business.” P 4 of Exhibit C.

i. The hearings officer agrees with Staff that the existing redemption facilities are accessory uses¹ that are incidental and subordinate to the primary grocery store use. Therefore the redemption facilities do not require separate approval. In this case the proposed redemption facility is completely separate and independent from the retail trade establishments (grocery stores) it is intended to serve. This facility will replace on-site redemption facilities at several unrelated stores (Fred Meyer, Safeway, Albertsons and WinCo). The proposed redemption facility will be the primary use on the site. Therefore permits are required for this primary use.

6. The hearings officer finds that the proposed redemption facility is a “recycling facility,” specifically a “recycling collection site” subject to CDC 8.0112(W).

a. The Code does not define the terms “recycling facility,” “recycle,” “collection,” or “facility.” Therefore the hearings officer must rely on the dictionary definition of these terms. *Webster’s New World Dictionary* (2009) provides the following relevant definitions:

i. “Recycle” means, “To treat or process in order to use again (recycle aluminum cans);”

ii. “Collection” means, “the act or process of collecting;”

¹ CDC 3.0010 defines “Use, Accessory” as, “A use that is incidental and subordinate to the main use.”

iii. "Collect" means, "to gather together; assemble;"

iv. "Facility" means, "a building, special room, etc. that facilitates or makes possible some activity."

b. The hearings officer finds that the definitions in the "Planner's Dictionary" and the "*Cambridge Advanced Learners Dictionary*" cited by City staff are irrelevant. CDC 3.0001 requires reference to "[t]he latest edition of Webster's Dictionary of the English Language" to determine the meaning of terms that are not defined by the Code. The use of other dictionaries is not permitted.

c. The hearings officer finds that the proposed facility is a "recycling collection site," based on these definitions and the purpose and function of the use as described by the applicant. The facility will collect beverage containers from consumers for future recycling. In addition, the applicant will conduct some processing activities on the site, crushing the containers and package them for transportation, "prior to transporting the compacted containers for eventual recycling." P 2 of Exhibit C. The applicant states that, "The processing at the proposed Redemption Center is a preliminary step to recycling the beverage containers" p 7 of Exhibit C. The facility is clearly intended to and will operate as a "recycle collection site," a Type III community service use listed in CDC 8.0112(W).

7. The applicant argues that the facility is not a recycling center because it is licensed by the Oregon Liquor Control Commission (the "OLCC") and authorized by the Bottle Bill. Neither the OLCC nor the Bottle Bill require that the applicant recycle containers received at the facility. However recycling is what the applicant proposed to do; collecting containers at the facility for recycling. Therefore the facility will function as a recycling center.

a. In addition, although recycling is not expressly required, it is consistent with the purpose of the Bottle Bill.

The placing of a monetary value on beverage containers and its attendant encouragement for people to return them instead of discarding them by the roadside or in other public places or throwing them into the garbage is reasonably calculated to diminish the amount of solid waste and the amount of litter with which the state is required to deal.

American Can Co. v. Oregon Liquor Control Commission, 15 Or.App. 618, 704, 517 P.2d 691 (Or. App., 1974)

8. The fact that a "redemption center" is not listed as a community service use in CDC 8.0112 is irrelevant. The hearings officer finds that CDC 8.0112 is not intended to be an all-inclusive list limited only to the listed uses and excluding all other uses that are not specifically named, such that the doctrine of *expressio unis est exclusio alterius* (the

expression of one thing excludes another) would be applicable. See *Appleberry v. Berry*, 98 Or.App. 398, 779 P.2d 205, 209 (1989) (see dissenting opinion at 779 P.2d 205, 209). The proposed facility, as described by the applicant, is clearly similar to the general types of uses listed in CDC 8.0112(W).

9. The applicant argues that the facility is not a recycling facility, because it is not licensed by DEQ. However the proposed facility will only accept returnable cans and bottles, not solid waste. Therefore it is exempt from DEQ permit requirements, as a facility that receives "[o]nly source separated materials for purposes of material recovery..." OAR 340-093-0050(3)(c). OAR 340-093-0030(84) provides, "'Source Separate' means that the person who last uses recyclable materials separates the recyclable material from solid waste." In this case, customers of the facility will separate returnable containers from solid waste before bringing them to the facility. The facility will only accept such source separated materials. Therefore the facility is exempt from DEQ licensing requirements

10. There is no substantial evidence in the record to support the applicant's assertion that the recycling facilities listed in CDC 8.0112(W) are "generally larger than the proposed Redemption Center, usually outdoors, where various recycled materials are sorted." P 5 of Exhibit C. Nothing in the Code nor DEQ regulations establish a minimum size for recycling facilities or require that such facilities be located outdoors.

11. The applicant argues that the payment of a redemption fee for returnable containers distinguishes this facility from other recycling facilities. The hearings officer disagrees. Payment of a redemption fee does not alter the function of the facility; collecting certain types of containers for recycling. The redemption fee is not substantially different from the fees other material recyclers pay for metal or other valuable recyclable materials. The only difference is that in this case the statute, rather than the market, sets the amount of the payment in order to encourage consumers to return beverage containers, rather than discarding them as solid waste. See *American Can Co. v. Oregon Liquor Control Commission*, 15 Or.App. 618, 704, 517 P.2d 691 (1974) (Container deposits are intended to diminish the amount of solid waste by encouraging people to return them instead of discarding them).

12. The hearings officer finds that the proposed redemption facility will "[p]rimarily serve the general public..." CDC 3.0010 definition of "Community Services."

a. The redemption facility will serve the general public. Any member of the public can return containers to the facility. The applicant states, "At the center, beverage consumers will be provided with a service to facilitate the exchange of their empty beverage containers for the deposit they paid..." P 1 of Exhibit 7. At the hearing, Mr. Hall testified that, "The primary purpose of a redemption center is to provide a service, accepting the return of beverage containers, in exchange for money, return of the original deposit." The fact that the facility also provides a service to retailers, eliminating the need to provide redemption facilities at their individual stores, does not alter the public service function of the facility.

b. The fact that the facility is a "for profit business venture" is also irrelevant. Community service uses expressly include "[c]ertain private ...uses..." CDC 3.0010 definition of "Community Services." Most private facilities are primarily intended to benefit the owner/operator of the facility by generating a profit. The DEQ permitted transfer station operated by Gresham Sanitary Service and cited by the applicant in Exhibit C is a for profit business that clearly qualifies as a community service use pursuant to CDC 8.0112(W).

13. The hearings officer finds that the proposed facility is not a "recycling drop box" subject to approval under CDC 8.0110. The facility is much more than a "box" where customers can "drop" their containers. The applicant proposed to operate the facility inside a building where staff and machinery will count, crush and package containers and issue refunds. "Staff will be present to assist customers during all hours of operation." P 2 of Ex C. Some customers can "drop" their containers at the site for counting. However customers must first open an account with the applicant and facility staff must still count the containers on site in order to determine the amount of the customer's refund as well as processing the containers to prepare them for shipping.

14. Mr. Bildsoe questioned the applicant's estimates of customer volumes generated by the proposed facility. Exhibit I. Those concerns are not relevant to this application, which is limited to a request for interpretation of the Code. Mr. Bildsoe's concerns would be relevant to a future application for approval of a redemption facility on a particular site.

D. CONCLUSION AND DECISION

Based on the findings and discussion provided or incorporated herein and the public record in this case, the hearings officer hereby denies the appeal and affirms the manager's decision in File No. LTR 09-26000179 (Oregon Beverage Recycling Cooperative).

DATED this day of November 2009.

Joe Turner, AICP
City of Gresham Hearings Officer

Attachment B

Michael Neff

Subject: FW: Bottle Drop
Attachments: Bottle Drop Application.pdf

From: Stuart I. Cowie [<mailto:SCowie@cityofroseburg.org>]
Sent: Thursday, May 17, 2018 4:48 PM
To: Christopher Griffith <cgriffith@hk-law.com>
Subject: RE: Bottle Drop

Hi Chris,

Attached is a copy of the application. I think I may have given you the wrong use that we applied. The square footage of the building was 12,000 square feet. So it was well over the 5,000 square feet allowed for a "recycling center". In this case we made the following interpretation.

A "recycling center" is a site where people drop off recycled goods, no money is exchanged, and recycling is done on site. In the case of the Bottle Drop, money is exchanged, recycling is collected but then taken to another location. As long as crushing and compaction is done indoors and soundproofing measures in the bottle crushing area are utilized to minimize impacts to surrounding property owners then we considered it to be permitted as a "personal service" use. This is an outright permitted use with no limit on building dimension.

This was probably a stretch, but it worked and like I said no complaints or issues have occurred since it started operating. Hope this helps.

Stu

Attachment C

4. Exceptions:

- a. Does not include preschools, which are classified as Daycare.
- b. Does not include private, profit-making trade and vocational schools, which are classified as Personal Services.
- c. Does not include uses meeting the definition of Colleges.

K. Social/Fraternal Clubs/Lodges.

1. Characteristics: Social/Fraternal Clubs/Lodges are non-profit organizations with social, philanthropic, or recreational functions and activities.
2. Accessory uses: Accessory uses commonly found are offices, auditoriums, parking, and limited food and beverage service.
3. Examples: Examples include Veterans of Foreign Wars posts, Elks Lodges, and Masonic Temples. (Ord. 15-05 §2; Ord. 10-15 §1)

18.60.060 Commercial Use Categories

A. Adult Entertainment.

1. Characteristics: Adult Entertainment includes uses characterized or distinguished by an emphasis on matters depicting specified sexual activities or anatomical areas.
2. Accessory uses: Accessory uses commonly found include parking.
3. Examples: Examples include adult motion picture theaters, adult book stores, and topless, bottomless, and nude taverns and dance halls.

B. Animal-Related Commercial.

1. Characteristics: Animal-Related Commercial uses are those engaged in breeding or boarding of normal household pets. Limited animal sales may or may not be part of the use.
2. Accessory uses: Accessory uses commonly found include parking, office space, and storage space.
3. Examples: Examples include animal breeders, kennels, overnight boarding facilities, and a single dwelling unit exclusively occupied by an on-site caretaker or the kennel owner/operator and family.
4. Exceptions:
 - a. Facilities where the primary activity is animal sales shall be classified as Sales-Oriented Retail.
 - b. Does not include animal grooming, which is classified as Personal Services or Repair-Oriented Retail.

- c. Does not include veterinary clinics, which are classified as Office.
- d. Does not apply to poultry or livestock, which are classified as Agriculture/Horticulture.
- e. Overnight boarding facilities for household pets when these facilities and all their activities, with the exception of parking, are completely enclosed within a building, shall be classified as Personal Service.

C. Bulk Sales.

- 1. Characteristics: Establishments engaging in the sales, leasing, and rental of bulky items requiring extensive interior space for display.
- 2. Accessory uses: Accessory uses commonly found include parking, office space, and storage space.
- 3. Examples: Examples include furniture, large appliances, and home improvement.
- 4. Exceptions:
 - a. Does not include uses meeting the definition of Outdoor Sales.
 - b. Does not include Motor Vehicle Sales/Rental.

D. Commercial Lodging.

- 1. Characteristics: Commercial Lodging includes for-profit residential facilities where tenancy is typically less than 1 month.
- 2. Accessory uses: Accessory uses commonly found are parking, restaurants and bars, meeting and convention facilities, and recreational facilities for guests such as pools and gym.
- 3. Examples: Examples include hotels, motels, rooming houses, and bed-and-breakfast establishments.
- 4. Exceptions:
 - a. Does not include uses meeting the definition of Group Living or Transitional Housing.

E. Custom Arts and Crafts.

- 1. Characteristics: Establishments engaged in the on-site manufacture and sale of crafts, art, sculpture, pottery, stained glass, musical instruments, and similar items produced without the use of a mechanized assembly line or large-scale machinery. Typically the business is operated by an artist or craftsperson who may or may not be supported by a small number of assistants.
- 2. Accessory uses: Accessory uses commonly found include showrooms, sales facilities, parking, office space, storage space, and temporary outdoor activities subject to further regulation under Chapter 18.440, Temporary Uses.

3. Examples: Examples include artisans and artists producing arts and crafts from materials such as wood, glass, fabric, fiber, and painted images on canvas or other portable materials.
4. Exceptions:
 - a. Does not include uses where customers come to paint or assemble their own craft or artwork. Such uses are classified as Sales-Oriented Retail.

F. Eating and Drinking Establishments.

1. Characteristics: Eating and Drinking Establishments are characterized by the sale of prepared food and beverages for consumption on-site or take-away.
2. Accessory uses: Accessory uses commonly found are parking and outdoor seating areas.
3. Examples: Examples include restaurants, delicatessens, retail bakeries, taverns, brew-pubs, and espresso bars.
4. Exceptions:
 - a. Does not include grocery stores and convenience stores, which are classified as Sales-Oriented Retail.

G. Indoor Entertainment.

1. Characteristics: Indoor entertainment consists of for-profit facilities providing active recreational uses of a primarily indoor nature.
2. Accessory uses: Accessory uses commonly found include parking, offices, limited retail, and concessions.
3. Examples: Examples include health/fitness clubs, tennis, racquetball and soccer centers, recreational centers, skating rinks, bowling alleys, arcades, shooting ranges, and movie theaters.
4. Exceptions:
 - a. Does not include uses meeting the definition of Community Services or Cultural Institutions.

H. Major Event Entertainment.

1. Characteristics: Major Event Entertainment facilities are uses characterized by activities and structures that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature.
2. Accessory uses: Accessory uses commonly found include parking, maintenance facilities, and concessions.
3. Examples: Examples include auditoriums, stadiums, convention centers, and race tracks.
4. Exceptions:

- a. Does not include uses meeting the definition of Cultural Institutions.
- b. Does not include movie theaters or playhouses, which are classified as Indoor Entertainment.

I. Motor Vehicle Sales/Rental.

- 1. Characteristics: Motor Vehicle Sales/Rental includes land uses involved in the sale, lease, or rental of cars, motorcycles, light and heavy trucks, mobile homes, boats, and recreational vehicles.
- 2. Accessory uses: Accessory uses commonly found include parking, auto repair and maintenance facilities, office space, and storage space.
- 3. Examples: Examples include auto dealerships, used car lots, and car rental facilities.

J. Motor Vehicle Servicing/Repair.

- 1. Characteristics: Motor Vehicle Servicing/Repair includes freestanding vehicle servicing and repair establishments not accessory to new vehicle sales.
- 2. Accessory uses: Accessory uses commonly found include parking, office space, and storage space.
- 3. Examples: Examples include general service stations, quick oil-change facilities, car washes, and body shops.

K. Non-Accessory Parking.

- 1. Characteristics: Non-Accessory Parking is any public or private parking that is not accessory to a primary use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as Non-Accessory Parking.
- 2. Accessory uses: Accessory uses commonly found are a ticket booth to collect fees and house security personnel.
- 3. Examples: Examples include public and private structures and surface parking lots, freestanding fleet vehicle parking, commercial district shared parking lots, and transit park-and-ride lots.
- 4. Exceptions:
 - a. Parking facilities accessory to a use, but that charge the public to park for occasional events nearby, are not classified as Non-Accessory Parking.

L. Office.

- 1. Characteristics: Office uses are characterized by activities conducted in an office setting that focus on the provision of goods and services, usually by professionals. Traditional Office uses are characterized by activities that generally focus on business, government, professional, medical, or financial services. Office uses may include activities that, while conducted in an office-like setting, are less consumer-oriented and focus on the support of off-site service personnel or in the

development, testing, production, processing, packaging, or assembly of goods and products. Medical, dental, veterinary offices are out-patient clinics that provide healthcare to humans or animals, characterized by a professional or group of professionals assisted by support staff.

2. Accessory uses: Accessory uses commonly found are parking and storage facilities.
3. Examples: Examples include government offices; medical, dental, and veterinary clinics and laboratories; blood collection centers; professional offices for attorneys, architects, engineers, stockbrokers, insurance brokers, and other consultants; headquarters offices; sales offices; radio and television studios; administrative offices for painting, building, and landscaping contractors; and software development firms.
4. Exceptions:
 - a. Offices that are part of and are located within a firm in another use category are considered accessory to the firm's primary activity.
 - b. Contractors and others who perform services off-site are included in the Office category if equipment and materials are incidental to the office use and their storage does not constitute 50 percent or more of occupied space; otherwise, they are classified as Industrial Services.

M. Outdoor Entertainment.

1. Characteristics: Outdoor Entertainment consists of for-profit facilities providing active recreational uses primarily in an out-of-doors setting.
2. Accessory uses: Accessory uses commonly found include parking, offices, clubhouses, and concessions.
3. Examples: Examples include outdoor tennis clubs, golf courses, and shooting ranges.
4. Exceptions:
 - a. Does not include uses meeting the definition of Community Services.

N. Outdoor Sales.

1. Characteristics: Outdoor Sales are sales-oriented establishments requiring extensive outdoor or only partially-enclosed display or storage. These uses may be retail, wholesale, or a combination of the two.
2. Accessory uses: Accessory uses commonly found include parking and office space.
3. Examples: Examples include lumber yards and plant nurseries.
4. Exceptions:
 - a. Does not include Motor Vehicle Sales/Rental and Vehicle Fuel Sales.
 - b. Does not include outdoor dining areas for Eating and Drinking Establishments.

- c. Does not include incidental and temporary outdoor activities such as Christmas tree lots, "sidewalk sales," and seasonal markets, which may be subject to regulation in Chapter 18.440, Temporary Uses.
- d. Does not include limited outdoor or partially-enclosed display or storage areas that are clearly incidental and accessory to retail uses selling hardware and home improvement supplies.

O. Personal Services.

- 1. Characteristics: Personal Services are establishments that are oriented towards the provision of consumer services in a manner typically necessitating no more than 1 consumer visit per service transaction.
- 2. Accessory uses: Accessory uses commonly found include parking, office space, and storage space.
- 3. Examples: Examples include banks/credit unions, barber/beauty shops, self-serve pet grooming, laundromats, copy centers, photographic studios, trade/vocational schools, mortuaries, and beverage container redemption centers.
- 4. Exceptions:
 - a. Does not include Office.
 - b. Does not include Repair-Oriented Retail.
 - c. Does not include Motor Vehicle Servicing/Repair and Vehicle Fuel Sales.

P. Repair-Oriented Retail.

- 1. Characteristics: Repair-Oriented Retail are establishments providing product repair of consumer and business goods, and other consumer services that typically necessitate 2 or more consumer visits per service transaction.
- 2. Accessory uses: Accessory uses commonly found include parking, office space, workshop space, and storage.
- 3. Examples: Examples include televisions and radios, bicycles, clocks, jewelry, guns, small appliances, office equipment, tailors and seamstresses, shoe repair, locksmiths, upholsterers, photo and laundry drop-off, dry-cleaners, quick printing, drop-off pet grooming, and doggy-daycare.
- 4. Exceptions:
 - a. Does not include Motor Vehicle Servicing/Repair.

Q. Sales-Oriented Retail.

- 1. Characteristics: Sales-Oriented Retail firms are involved in the sale, leasing, and rental of new or used products to the general public.

2. Accessory uses: Accessory uses commonly found include parking, office space, storage space, and temporary outdoor activities subject to regulation in Chapter 18.440, Temporary Uses.
3. Examples: Examples include art, art supplies, bicycles, clothing, dry goods, electronics, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationery, and printed and electronic media.
4. Exceptions:
 - a. Does not include uses meeting the definition of Bulk Sales.
 - b. Does not include uses meeting the definition of Outdoor Sales.
 - c. Does not include Motor Vehicle Sales/Rental and Vehicle Fuel Sales.

R. Self-Service Storage.

1. Characteristics: Commercial operations that provide rental of storage space to individuals or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.
2. Accessory uses: Accessory uses commonly found include parking, office space, and a dwelling unit for a residential caretaker.
3. Examples: Examples include single-story and multi-story facilities that provide individual storage areas for rent, often called mini-warehouses or self-storage facilities; and the storage of boats and recreational vehicles.
4. Exceptions:
 - a. Does not include moving and storage companies where there is no individual storage or where employees are primary movers of the goods to be stored. Such uses are classified as Warehouse/Freight Movement.
 - b. Does not include the storage of fleet vehicles, which is classified as Non-Accessory Parking, or the storage of sales or rental inventory, which is classified as Motor Vehicle Sales/Rental.

S. Vehicle Fuel Sales.

1. Characteristics: Vehicle Fuel Sales includes establishments engaging in the sale of petroleum and non-petroleum based fuels for cars, motorcycles, trucks, recreational vehicles, and boats.
2. Accessory uses: Accessory uses commonly found include parking, office space, and storage space.
3. Examples: Examples include gas stations and electric vehicle charging stations. (Ord. 10-15 §1)

18.60.070 Industrial Use Categories

A. General Industrial.

Exhibit B

DECLARATION OF GAGE BERGERON

1. I reside at 21285 E Highway 20, Apartment #116, Bend, OR 97701. I am a 2009 graduate of Bend High School.

2. I am a former employee of the Oregon Beverage Recycling Cooperative ("OBRC"). I worked for the OBRC at both the Bend and Redmond BottleDrops. I held several different jobs while working for the OBRC, including Material Handler, Front End Customer Service, and Site Supervisor. My work tenure at the Redmond and Bend BottleDrops totaled approximately six to eight months.

3. BottleDrops have two basic operational areas – the front end and the back end. The front end is the portion of the BottleDrop where beverage containers are returned for recycling. The back end is the portion of the BottleDrop where accepted beverage containers are sorted and processed before being loaded onto trucks and taken from the BottleDrop.

4. My work in the positions of Material Handler and Site Supervisor caused me to become familiar with the operation of the back end of the two BottleDrops at which I worked for the OBRC. Both of these positions required me to work extensively in the back end of these BottleDrops.

5. At the time of my employment with OBRC, recycled beverage containers were returned to a the BottleDrops at which I worked three different ways. Some were fed directly into reverse vending machines by the person returning the container. Some were returned in green bags containing barcode identifiers. Some were hand counted by BottleDrop Front End Customer Service employees.

6. The back end of the BottleDrops I worked in housed systems of machines connected by an extensive and mechanically-sophisticated conveyor belt system. Containers that were hand-counted or left in green bag containers were dumped into a large hopper. From this hopper, the containers fell onto a spinning cone-shaped circular conveyer belt which worked to sort aluminum, glass, and plastic containers. Glass containers, which are the heaviest of the materials, bypassed the other two sorting methods and landed on another conveyor belt which leads to the glass crusher. Aluminum cans were pushed onto a different conveyor belt using an air blaster. The aluminum cans then traveled down this new conveyor belt to a can-crushing and baling machine. Plastic containers also were pushed onto a separate conveyer belt which fed into an auger. The auger perforated and/or shredded each plastic container to make later compacting and transport easier.

7. Containers returned using a reverse vending machine (RVM) in the lobby were sorted in a similar but slightly different fashion using different machinery. After sorting, containers entered the respective conveyor belts, and then were transported to the glass crusher, the aluminum crusher, or the plastic auger for processing – crushing for glass, crushing and bricking for aluminum, and perforation/shredding for plastic.

8. The glass crusher utilized a “stepped” conveyor belt which pulled glass containers upward before dropping them on a spinning steel drum. Paddles attached to the spinning drum worked to crush the glass which fell into ground-level containers. The crushed glass was stored in large totes which were too large to move by hand but were moved around the facility using fork lifts and large machine-driven dollies.

9. Once aluminum cans traveled by conveyor belt to the “can” crusher, a mechanical piston flattened cans one after another until a full “brick” of crushed cans was detected and pushed along the exit chute. When sensors identified the brick was complete, the can crusher mechanically pushed the brick out of the crusher and this aluminum brick would be stacked on a pallet and eventually wrapped by a BottleDrop employee. Each brick weighs about 30-40 pounds, and a full pallet of aluminum bricks weighs approximately 750 pounds.

10. The auger system used to process plastic containers did not act on all plastic uniformly. Some plastic containers were perforated in multiple places and crushed. Other plastic containers were torn into multiple smaller pieces. These pieces would be pushed out of the machine and fall into a large collection bag.

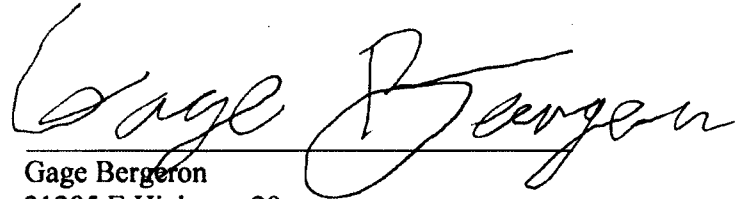
11. Employees working in the back end of the BottleDrops where I was employed, were working in what I would describe as an industrial environment. Back-end workers were encouraged to wear steel-toed boots that were waterproof and slip-proof; however, slip-proof was the only required feature. The back end was extremely noisy, and employees working the back end were considered to be “behind the sound wall.” Employees working behind the sound wall also were expected to wear earplugs. Other necessary equipment were gloves, eye-protection goggles, and a face shield (in the event of clearing a glass jam). Occasionally, the conveyor belts and the crushing and shredding machines become jammed and required maintenance. In such case, a back end employee shut down and locked out the jammed equipment in order to work on and clear the jammed machinery. Visitors to the BottleDrop were not allowed in the back end because the industrial machinery was considered dangerous to the average or untrained person. Working in the back end of a BottleDrop was a messy and smelly job performed in a loud environment dominated by conveyor belts and machines processing recycled beverage containers.

12. Because so many beer containers and sugar-based drinks were processed each day at a BottleDrop, it is difficult to prevent odor created by stale and molding beer and sugar-based drinks. The bottom of the crushing machinery and the auger for plastics were characterized by a liquid mess of beer and sugary drink residue. This liquid mess also is found in the glass totes and under the aluminum brick pallets, and often across other areas of the back-end floor. BottleDrop Site Supervisors were expected to make sure employees mop the floors of the facility daily, but inadequate staffing levels while I worked at the Redmond and Bend BottleDrops often prevented this from happening more than twice a week.

13. At the time I worked at the Redmond BottleDrop, the facility did not process beverage containers picked up from other BottleDrops or grocery stores, but only processed containers brought directly by the public to the BottleDrop.

The testimony in this declaration is true to the best of my information, knowledge, and belief.

Dated this 15th day of June, 2018.

A handwritten signature in black ink, reading "Gage Bergeron". The signature is written in a cursive style with a horizontal line underneath the name.

Gage Bergeron
21285 E Highway 20
Apartment #11B
Bend, OR 97701

Exhibit C



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

FAX (503) 378-5518

Web Address: <http://www.lcd.state.or.us>

Predictability in Planning

Planning is a process to enhance both predictability and citizen involvement. The desire is to make decisions, which provide landowners with clear expectations as to what they can do with their land, while assuring that citizens have opportunities to participate in those decisions.

In Oregon, we have used our statewide planning program to greatly enhance citizen involvement in planning, but at the same time we have taken strong measures to maintain predictability. Our efforts toward predictability have involved many elements.

1. Clear Policy Direction - We require land-use planning. Oregon requires every city and county to have a comprehensive plan and the implementing measures necessary to make that plan work. In addition, we require that those plans and implementing measures meet statewide standards -- and they have.

Landowners, developers and permit applicants get predictability from all of that because it puts the rules for decision making on paper, and it establishes those rules before the permit application process begins.

2. Protection from Conflicts - One of the main reasons for land-use planning is to reduce the number and extent of conflicts between land uses. In Oregon, every square inch of privately owned land in the state has been zoned, and the main purpose of that zoning is to segregate incompatible land uses. For example, in the Exclusive Farm Use zones that have been applied to more than 16 million acres of private farmland, intensive development and urban uses are prohibited.

3. Coordination - "Coordination," as the word is used in Oregon's planning program, has two meanings. It means keeping one community's plan consistent with another's and it also means keeping local, state and federal agencies pulling together, in a direction consistent with the state-approved local plan. This coordination enhances predictability by assuring that one local government's land use decision will not be thwarted by the actions of another local government or state agency.

4. One Level of Review - One of the most important features of Oregon's planning program is its single tier of planning and permit administration, all at the local level. The state-approved local land-use plan is the controlling document for land-use decisions, and land-use permits are administered by city and county officials.

5. Clear and Objective Approval Standards - The program has required that clear and objective review standards be used in reviewing permit applications for controversial land uses such as multifamily housing, manufactured homes and quarries. Under Oregon law, development officials cannot use vague standards such as "compatibility with the neighborhood" to deny an application for a needed housing type in an appropriate zone. Insistence on having clear standards protects developers and permit applicants from arbitrary and inconsistent decisions and thereby enhances predictability.

6. Centralized Appeals - In 1979 the Oregon Legislature created a special land use court, the Land Use Board of Appeals (LUBA). The result has been a dramatic decrease in the time needed to resolve appeals and an increase in the consistency of decisions.

7. The "Raise It Or Waive It" Standard - After LUBA had been in operation for a few years, some people became concerned that appellants were ambushing developers by raising a host of new issues in the appeal before LUBA. Legislation in 1989 says that to have standing in an appeal before LUBA, petitioners must first participate at the local level and must raise all pertinent issues there. Petitioners may not raise issues at LUBA that were not raised during the local review.

8. Statutory Deadlines - Oregon law specifies that local governments must render decisions on land use permits within 120 days for cities, and 150 days for counties, of receiving a complete application for such a permit. Any local appeals -- for planning commission to city council, for example -- are included in that time limit. There are similar time limits on LUBA's decisions.

In total, the state's land-use planning program serves to increase the predictability of land use decisions for everyone.

Exhibit D

Scott Whyte

From: Stephanie Marcus <SMarcus@obrc.com>
Sent: Wednesday, August 24, 2016 10:28 AM
To: Scott Whyte
Subject: BottleDrop Redemption Centers- Potential Site
Attachments: Beaverton Zoning 8-23 (003).docx; Pictures.pdf

Hello Scott,

As requested, attached is zoning and use information about locations that we currently operate in and sites that we are working through potentially opening in the near future. The site located at 9307 SW Beaverton Hillsdale past use was a Pier 1 Retail Store. It is a stand-alone building about 10,000 SF in size, 38,714 SF total land, and approximately 40 parking spaces. I have also attached photos of some of our current operating sites. After you review, please let me know if you have any additional questions. We are very hopeful to finally place a BottleDrop Redemption Center in Beaverton after many years of searching for a property that would fit our necessary requirements for operation. I look forward to hearing from you.

Thank you,

Stephanie Marcus

Property Acquisition & Development Manager
Oregon Beverage Recycling Cooperative
3900 NW Yeon Ave, Portland, OR 97210
P (503) 542-0756
F (503) 222-2291
C (971) 258-5515

provided as attachment
to OBRC e-mail of
Aug. 24, 2016

Current BottleDrop Redemption Center Sites Zoning/Use Information:

Albany

Location:

- 2141 Santiam Hwy SE, Albany, OR 97322

Zoning:

Community Commercial: The CC district recognizes the diversity of small to medium-scale businesses, services and sites mostly located on arterial streets and highways. Design guidelines, building location and front-yard landscaping will provide a coordinated and enhanced community image along these major transportation corridors as they develop or redevelop. Sound and visual buffers should be used to mitigate impacts on nearby residential areas.

Use:

Retail Sales and service: Retail Sales and Service businesses sell, lease or rent new or used products to the general public. Businesses may also provide personal services, or provide product repair or services for consumer and business goods. For the most part, operations are conducted within enclosed buildings, and outside storage is screened.

Eugene

Location:

- 2105 W Broadway, Eugene, OR 97402 (Plant & Redemption Center Combo Building)
- 1014 Green Acres, Eugene, OR 97408

Zoning:

C-2 Community Commercial: The C-2 Community Commercial: zone is designed to implement the Metro Plan by providing areas for community commercial uses. These areas usually include at least 5 acres and not more than 40 acres, and are intended to include a wide range of purchaser goods and entertainment, office, and service needs for a support population smaller than that of the metropolitan area but larger than that of a neighborhood. Housing is also permitted in this zone, which may occur independently on individual lots or parcels, or be located in clusters that share parking facilities and other common areas.

Use:

Recycling-Reverse Vending Machine: An automated mechanical device that accepts 1 or more types of empty beverage containers including, but not limited to aluminum cans, glass and plastic bottles, and issues a cash refund or a redeemable credit slip with a value not less than the container's redemption value as determined by State law. A reverse vending machine may sort and process containers mechanically provided that the entire process is enclosed within the machine.

Forest Grove

Location:

- 2933 Pacific Avenue, Forest Grove, OR 97116

Zoning:

Community Commercial: The CC zone is established to promote a concentration of mixed uses – including retail, service, office and residential uses – along the regional transit corridor. The link between land use and transit is intended to result in an efficient development pattern that supports the regional transit system and makes progress in reducing traffic congestion and air pollution. The location, mix and configuration of land uses are designed to encourage convenient alternatives to the auto, a safe and attractive streetscape, and a more livable community.

Use:

Personal Services: Establishments which provide consumer services such as banks and credit unions, barber and beauty shops, pet grooming, laundromats and dry cleaners, copy centers, photographic studios, trade/vocational schools, and mortuaries.

Grants Pass

Location:

- 1040 Rogue River Hwy, Grants Pass, OR 97527

Zoning:

General Commercial District (GC): The purpose of the General Commercial District is to provide for all commercial and professional uses, excepting those uses requiring on-site manufacture or assembly. Performance development standards are designed to protect adjacent uses and development from impact, and the market factors of supply, demand, location and cost are expected to provide commercial development in appropriate types, amounts and relationships.

Use:

Personal Services:

Personal Services: Services, the primary function of which is to enhance the appearance, health, or hygiene of individuals. Providing these personal services for the convenience of walk-in customers is the primary function. The sale of any product is accessory to these services. Typical uses include beauty and barber shops, professional masseuses, shoe repair shops, and coin operated laundries. Personal services do not include medical or dental offices or clinics.

Gresham

Location:

- 1313 E Powell Blvd, Gresham, OR 97030

Zoning:

Downtown Commercial Low-Rise (DCL): This sub-district contains major corridors with the types of businesses, services, stores, and offices that demand a higher level of automobile access to employees and customers. Structures may be single use and aimed at regional traffic. This sub-district will still serve this role, but the corridors will become more balanced over time to meet the needs of pedestrians as well as automobile traffic. The sub-district's character will evolve as buildings and more walkable streets become prominent and parking is located to the side or rear of properties. This sub-district allows commercial, residential, and employment uses, including auto-related uses such as service stations, auto repair, and car washes.

Use:

Redemption Center: An indoor retail facility approved by the Oregon Liquor Control Commission facilitating the return of empty beverage containers and serving dealers of beverages, where any person may return empty beverage containers and receive payment of the refund value of such beverage containers.

Hermiston:

Location:

740 W Hermiston Ave, Hermiston OR 97838

Zoning:

C-2 Outlying Commercial: No definition

Use:

Second hand goods and retail: No definition, decided on a discretionary basis

Klamath Falls:

Location:

- 2702 Eberlein Ave, Klamath Falls, OR 97603

Zoning:

General Commercial: No definition, done on a discretionary Basis

Use:

Personal Services: No definition, done on a discretionary basis.

Milwaukie:

Location:

- 6106 SE King Rd, Milwaukie, OR

Zoning:

C-G General Commercial: 'The code does not provide a purpose statement for the C-G Zone. However it is a generally permissive zone for a wide range of commercial uses including vehicle sales and service, repair establishments, plumbing, electrical, and HVAC shops, printing plants, retail, office, restaurants, and personal service establishments, among a whole host of others. Also listed is "any other use similar to the above and not listed elsewhere.'"

Use:

Redemption Center: 'Currently a redemption center (as a standalone use and not accessory to an existing use such as a grocery store) is not defined in the zoning code. However, the concept is new. According to the applicant's materials, the majority of the 15 existing BottleDrop sites currently in operation are located in General Commercial zones and have been classified as either retail services or personal services.'

(See directors determination of similar use)

Portland:

Locations:

- 1176 N Hayden Meadows Dr, Portland, OR 97217
- 12403 NE Glisan St, Portland, OR 97230

Zoning:

General Commercial: The General Commercial (CG) zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

Use:

Retail Sales and Service:

1. **Characteristics.** Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.
2. **Accessory uses.** Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, food membership distribution, and parking.
3. **Examples.** Examples include uses from the four subgroups listed below:
 - A. **Sales-oriented:** Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales, and Farmers Markets; and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.
 - B. **Personal service-oriented:** Branch banks; urgency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning, and personal 920-7 Chapter 33.920 Title 33, Planning and Zoning Descriptions of the Use Categories 7/24/15 care services; business, martial arts, and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; kennels limited to boarding, with no breeding; and animal grooming.
 - C. **Entertainment-oriented:** Restaurants, cafes, delicatessens, taverns, and bars; indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks, and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs, and lodges; hotels, motels, recreational vehicle parks, and other temporary lodging with an average length of stay of less than 30 days.
 - D. **Repair-oriented:** Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing.

Salem:

Locations:

- 4815 Commercial St SE, Salem, OR 97302
- 1917 Lancaster Dr NE, Salem, OR 97305
- 1880 Commercial St NE, Salem, OR 97301

Zoning:

General Commercial: The purpose of the General Commercial (CG) zone is to implement the Commercial designation of the Salem Area Comprehensive Plan through the identification of allowed uses and the establishment of development standards. The CG zone generally allows a wide variety of commercial uses, including the sale of commodities, performance of services, repair facilities, motor vehicle sales and services, offices, and general wholesaling.

Retail Commercial: The purpose of the Commercial Retail (CR) zone is to implement the Commercial designation of the Salem Area Comprehensive Plan through the identification of allowed uses and the establishment of development standards. The CR zone generally allows a wide array of retail sales and office uses.

Use:

Retail Sales and Services (Personal Service): Retail Sales and Service consists of the sale, lease, or rental of products or services to the general public for personal or household use. Customers typically come to the site to obtain goods or services. Some delivery or shipping may also be included.

a. **Personal Services:**

Characteristics: Personal Services are characterized by establishments that provide non-medical services to individuals involving the intellectual or manual personal labor of the server, rather than a saleable product of the server's skill. Services may be performed on a customer's person or personal items. Services may include repair, maintenance, or cleaning of clothing and/or accessories and/or non-medical aesthetic or personal care treatments to individuals. These services typically are provided directly to consumers.

Examples: Barber shops; beauty salons; garment alteration; jewelry and watch repair; laundromats; laundry and dry cleaning establishments where customers typically bring items to the site for cleaning; photograph portrait studios; shoe repair; spas; tailors and seamstresses; tattoo/piercing parlors.

Tigard Zoning

Location:

- 14411 SW Pacific Hwy, Tigard, OR 97224

Zoning:

C-G General Commercial District: The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a city-wide and even regional trade area. Except where nonconforming, residential uses are limited to single-family residences which are located on the same site as a permitted use. A wide range of uses, including but not limited to adult entertainment, automotive equipment repair and storage, mini-warehouses, utilities, heliports, medical centers, major event entertainment, and gasoline stations, are permitted conditionally.

Use:

Personal Services:

1. **Characteristics:** Personal Services are establishments which are oriented towards the provision of consumer services in a manner typically necessitating no more than one consumer visit per service transaction.
2. **Accessory uses:** Accessory uses commonly found include parking, office space, and storage space.
3. **Examples:** Examples include banks/credit unions, barber/beauty shops, self-serve pet grooming, laundromats, copy centers, photographic studios, trade/vocational schools, mortuaries, and beverage container redemption centers.

Wood Village

Location:

- 23345 NE Halsey St, Wood Village, OR 97060

Zoning:

Neighborhood Commercial: This zone is intended for convenience retail and service establishments of limited scale to serve primarily the needs of local residents. Such uses shall be physically and visually compatible with adjacent residential development through appropriate use of landscaping, access, parking, signs and architectural design.

This zone is intended to promote a compatible combination of small-scale retail commercial uses and medium to high-density residential uses along Halsey Street and Wood Village Blvd (between Arata Road and Halsey Street) where there is frequent transit service and a pedestrian-oriented streetscape. Uses are restricted in size to promote a local orientation and to limit adverse impacts on nearby residential areas. Housing options are expanded to encourage upstairs residences over storefront commercial, townhouses, and rowhouses with quality pedestrian access to transit and services.

Use:

Retail Sales and Services: Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

Potential Properties Zoning

Corvallis:

Potential Location:

1921 NW 9th Street Corvallis

Zoning:

Mixed Use Commercial: The MUCS Zone is intended to provide for retail businesses and commercial and personal service activities of limited sizes, with larger Uses in the Major Neighborhood Center Zone, and mixed use developments, accommodating both pedestrian oriented Uses and a limited number of land uses that are more dependent on automobile circulation.

Use:

Convenience Sales and Personal Services: Provision of small personal items or services. These include various general retail sales and personal services of an appropriate size and scale to primarily serve the personal needs of the surrounding neighborhood. Typical Uses include neighborhood grocery stores, specialty stores, drugstores, laundromats/dry cleaners, barbershops, bookstores, video stores, coffee shops, and beauty salons.

Lebanon

Potential Location:

914 S 2nd Street, Lebanon, OR

Zoning:

Central Business Commercial: central business commercial zone (Z-CCM) is focused on "downtown" area, or the commercial and civic the core of the community. Intended to:

1. To preserve and enhance areas within the commercial core of the community for concentrated retail sales and businesses that will serve the pedestrian shopper;
2. Promote efficient use of land and urban services;
3. Create a mixture of land uses that encourages employment and housing options in close proximity to one another;
4. Provide formal and informal community gathering places and opportunities for social activities;
5. Provide connections and appropriate transitions between residential areas and commercial areas;
6. Encourage and nurture pedestrian-oriented shopping and activity in the downtown (central business commercial zone), and accommodate automobile dependent uses, as well as pedestrian-oriented uses, with appropriate standards in the highway commercial zone;

7. Provide for visitor accommodations and tourist amenities;

8. Encourage full utilization of downtown infrastructure (including parking) and other amenities.

Use:

Commercial Class 1:

- A. Commercial Uses: Activities within land areas that are predominantly connected with the sale, rental and distribution of products or performance of services.
 - a. Class I: Class I Impacts: Class I Impacts are the least significant impacts. Development with Class I Impacts would have minimal adverse project impacts. The range and scale of the impacts would be limited to the subject property and the immediately adjacent properties. The adverse project impacts would include factors that could impact the health, safety, and welfare of the citizens within this area surrounding the subject property. Such impacts would generally require the least amount of mitigation if any, and would normally require minimal evaluation during the planning review and permitting processes in order to protect the interests of the public.

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Exhibit E

Michael Neff

From: Michael Neff
Sent: Thursday, March 29, 2018 9:04 AM
To: 'Anna Slatinsky'
Cc: 'Peter Livingston'; 'Mike Connors'
Subject: RE: Further OBRC Followup Comments
Attachments: 20180328083444.pdf

Here it is with my typos corrections. My apologies for being hasty and not proofreading carefully.

Mike Neff

From: Anna Slatinsky [mailto:aslatinsky@beavertonoregon.gov]
Sent: Thursday, March 29, 2018 8:57 AM
To: Michael Neff <MNeff@hk-law.com>
Cc: Peter Livingston <plivingston@beavertonoregon.gov>; 'Mike Connors' <mike@hathawaylarson.com>
Subject: RE: Further OBRC Followup Comments

Thanks, Mike.

From: Michael Neff [mailto:MNeff@hk-law.com]
Sent: Wednesday, March 28, 2018 9:03 AM
To: Anna Slatinsky <aslatinsky@beavertonoregon.gov>
Cc: Peter Livingston <plivingston@beavertonoregon.gov>; 'Mike Connors' <mike@hathawaylarson.com>
Subject: Further OBRC Followup Comments

Anna:

Attached are the March 9, 2017 minutes of the Denney Whitford/Raleigh West NAC meeting. I have outlined a few items which are relevant to the issues surrounding the upcoming Director's Interpretation involving the OBRC facility on Beaverton-Hillsdale Highway.

On page 2, you can see that the NAC co-chair – Ernie Conway – tells those in attendance that the City already had approved the project and that the meeting was informational only. Later Scott Whyte echos this when he tells those in attendance that notice was not required in this case. I highlighted Ernie's comments for Peter Livingston, who had asked me about why I thought notice was deficient. The point is the community was not given reasonable notice for purposes of challenging what effectively was a use determination by the City. Then, in the face of an appeal, the OBRC moved forward with its project.

On page 4, I highlighted a comment by Scott Whyte that the proposed use did not involve any processing on site. This statement is consistent with Scott's e-mail sent nine months later to Royal Woodlands neighbor Rick Skayhan. This is further evidence that Scott Whyte did not truly understand the type and extent of activities that would be taking place on site.

Later on page 4, I highlight Scott Whyte's comment that the usage at the site already happens in the commercial areas at the respective grocery stores. This demonstrates a failure on Scott's part to recognize two points: (1) the scale and intensity of the use proposed by OBRC for the site, in the form of processing 80,000 containers daily; and (2) that the activity at the respective grocery stores was an ancillary or accessory use, that clearly was subordinate to the retail commercial use of the grocery stores.

Lastly, on page 2, I highlight acknowledgement by the OBRC's Cheryl Bertges that a BottleDrop processes containers. This is a minor point, but was made by a OBRC representative at the same meeting where Scott Whyte insisted no processing of materials will take place at the site.

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City of Beaverton
Neighborhood Association Committee Meeting Minutes

NAC: Denney Whitford / Raleigh West

Date: March 9, 2017

Board members present:

☒ Co-Chair: Sherry Moore

☒ Co-Chair: Ernie Conway

☒ BCCI Rep: Michelle Lupo

☒ Treasurer: Sheri Struk

☒ Recorder: Tracy Thornton

Quorum present? ☒ Yes ☐ No

Meeting start time: 7:00

Beaverton Police Department Report: Officer Justin Haugen gave an update on crime stats. In last month's meeting, one of the concerns was graffiti, and he noted that for February there were 3 reports of vandalism (which includes graffiti), but January had 8, so there appears to be a decrease. In general, most crime types have gone down except DUIs, which the department tends to focus on.

The department is close to implement the use of body cameras. A "train the trainer" session is coming up in the next couple of weeks, and the plan is to roll out this new technology to the officers after that.

Check the department website for car seat clinics and drug recycling events:
<http://www.beavertonpolice.org/>

Michelle Lupo asked about cables laid across Larch Drive between Beaverton-Hillsdale Highway and 5th Street. Officer Haugen said that those are normally set up by the Traffic Department for cases where, for example, they receive a report that people are speeding in a neighborhood. The cables allow the Traffic Department to gather statistics and take appropriate action and/or report back to the person who reported the issue.

The department plans to hire about five new officers in June. The officers who were placed on administrative leave due to the shooting on 170th are due back to work in a couple of weeks.

Tualatin Valley Fire & Rescue Report (Station 53): No report.

Tualatin Hills Parks & Recreation District Report: Kelly McNutt continues to cover for Heath Wright as the temporary center supervisor at the Harman Swim Center and as our THPRD rep. She reported that THPRD's master sign replacement plan, due to a logo change, is phasing in sign updates. The plan is to replace the remaining 266 signs by the end of March. The Cedar Hills rec center is getting a new playground; work has started and will continue through the end of May.

The Nature Park has changed its volunteer strategy. It used to try to get volunteers who could commit to a lengthy term, but it was difficult to find people willing to commit to that much time. They have switched to shorter volunteer assignments and they have seen a huge increase (73%) in volunteers; thus, they'll continue to use this system. Volunteering is open to all ages, and they're seeing a lot of student volunteers.

THPRD won the budget presentation award for the 13th consecutive year. This award judges the effectiveness of an organization's policy document, their financial planning, and how the budget presentation works as a communications device. Kelly reminded us that THPRD budget meetings are open to the public.

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THPRD has won a \$3.7 million grant from Metro for a new, 1.5 mile long, 12 feet wide section of trail that will connect the Beavercreek trail to Hocken Ave. The anticipated benefits are more pleasant, off street passage for its users, a safer way to travel that area, and improved access to light rail for people not using cars; this trail section will also feed into commercial areas. This trail fills a gap in THPRD's 70 mile trail system.

In the aquatics area, THPRD's 50 meter pool is in its second remodeling phase, and will be closed down for a portion of summer into fall; exact dates are TBD (but will be announced as soon as they're known). This will create an influx of people into the other swim centers. The swim centers continue to host "Dive-In Movies"; the next one is scheduled for March 25th from 6:00 pm to 8:00 pm at Harmon and the movie is Disney's "Beauty and the Beast." These have been popular events. The "first free Fridays" program is also continuing; this program allows people to use the aquatics facilities at no cost for open swim, lap swim, and/or family swim on the first Friday of every month.

Guest Speaker:

Cherilyn Bertges from Oregon Beverage Recycling Cooperative (OBRC) gave a presentation on a new, stand-alone "bottle drop" center that is going in where Pier 1 used to be located, at 9307 SW Beaverton-Hillsdale Highway. Ernie noted for the attendees that this was not a public hearing or a preliminary meeting; OBRC has already filed their permits with the City and has been approved to move into that space. This is an informational presentation to let people know how the new center will work and to give them a chance to ask questions.

A bottle drop center accepts and processes deposit containers returned in Oregon, regardless of where they're purchased. This function, now being performed by many retail grocery stores (such as Fred Meyer or Safeway) is being moved, with the financial support of those stores, to stand alone centers like the one OBRC is creating. There are currently 19 of these centers open across the state, including one on Highway 99 in Tigard; the Beaverton location will be their 20th. These drop centers are different from grocery store self-service facilities. These locations are staffed, indoor facilities that provide additional services, such as a bag drop program, a manual bottle count by staff, and state of the art self-service vending machines that are able to both accept containers more quickly and to accept mixed containers; glass, aluminum, and plastic containers can all be recycled together. OBRC strives to provide a good retail experience and focuses on keeping the facilities safe and clean.

For people wanting their bottle returns hand counted, staff will count up to 50 containers at a time while you wait. The self-service machines work much like those at grocery stores, only faster, and they're designed in such a way that they don't break down as often. The biggest difference between these centers and a grocery store is the "green bag" drop-off program. To participate in this program, you need to sign up for an account. You are then given a green plastic bag to take home along with bag tags; each bag holds between 75 and 100 containers. You then fill the bag and drop it off at the center any time during drop-off hours (7:00 am to 10:00 pm; note that while some other centers are open 24/7, City of Beaverton code restricts retail business hours to this range.) Staff members then count your bottles and deposit the redemption value to your account. You can access those funds at any center or also at participating retailers, such as Fred Meyer and Safeway. At those locations, you get your cash by going to a special bottle drop kiosk where you print out a receipt and then redeem that for cash from a cashier. As an added incentive, if you're going to use your cash to shop in that store, the store will give you \$.06 for every \$.05 in redemption value. You can take out as much as \$80 at a time (which would have a shopping value of \$96).

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These centers are an important way for retailers to manage the growing volume of recycling that is expected when all other containers (such as Gatorade and juices) fall under the Oregon bottle bill starting in 2018. The Oregon Liquor Control Commission oversees the state's recycling program and ensures that certain conveniences stay in place when recycling moves from grocers to these centers, such as easy parking, onsite wheel carts to help with transporting your containers, the drop off service, and open hours seven days per week. The only retailers who can participate in this program (that is, retailers that can stop accepting recycled containers or severely limit the number they will accept) are those with stores that are over 5000 square feet. There are 19 participating retailers, who fund these centers so that the centers can take over their bottle bill obligations. Six of these retailers will continue to accept up to 24 containers per person per day.

The new Beaverton center will have winter hours (when the facility is staffed) from 9:00 am to 6:00 pm, and it will be open until 7:00 pm in the summer. The center will hire 7-8 employees. The green bag drop off door will be accessible from 7:00 am to 10:00 pm for users of that program.

For more information, see the website at www.BottleDropCenters.com.

Questions/concerns

Security: Cherilyn noted that the other centers have not had issues with loitering because the facilities are staffed during business hours and they do not allow loitering on their sites. Security cameras will be placed throughout the facility. In some other locations around the state, security guards have been hired; the determination for whether that is needed will come after the facility has been up and running.

The Tigard facility is the one considered most like the Beaverton facility in terms of volume and the neighborhood area. An audience member noted that the two sites are not alike, because the Tigard facility is part of a large strip mall area and has a very large parking lot; there was concern that the parking lot at this facility would be too small.

One person expressed concerns that this site would see people dumping cans at night, creating sanitation and safety issues. Cherilyn noted that staff of the centers will keep the area clean during business hours and it's not expected that people will drop off redeemable containers outside of business hours, since the purpose of the facility is to redeem recyclable containers for money, and there will be no way to do that outside of the regular hours.

Traffic: Beaverton-Hillsdale Highway is a very busy street and there are concerns about people trying to turn left out of the parking lot, which is quite difficult at certain times of the day or on certain days of the week, such as Saturdays, when the facility is likely to be busy. Trucks will enter the facility to pick up recycling during regular business hours; when truck drivers plan their routes, they ensure that they take only right turns as this is more logistically and cost efficient for them. It was also noted that there would be less truck traffic overall because a truck is going to one facility to pick up recycling rather than having to stop at Fred Meyer, then New Seasons, then Rite Aid (for example).

Someone asked why a traffic study was not done. Scott Whyte, Senior Planner with the City, explained that because the use did not change, there was no requirement for a traffic study. An individual can request a traffic study if a specific issue is noticed, which could lead to a hearing before the Traffic Commission (Ernie, who is also chair of the Traffic Commission, commented about this process.) However, Scott noted that the best place to start is for neighbors to talk to each other about concerns; sometimes these issues can be resolved simply with additional signage (for example).

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There's a concern that this is located next to a medical/veterinary facility. There is a private road between the bottle drop center and the veterinary clinic, and it was assumed that people wanting to turn left would make a right turn out of the bottle drop center, then make another quick right turn onto this road as a way of getting to a road that would allow drivers to get to a light which would make a left turn onto BHH possible. There was no discussion about whether this was an issue when Pier 1 was operating at this location.

Other concerns:

Several people expressed general frustration with the fact that they were not notified about this new facility. Scott Whyte explained that the usage for this facility commercial (e.g. retail), not industrial, and nothing is being processed on site; containers are collected and then transported to another facility for processing. Because the usage did not change from the previous occupant (Pier 1), City law does not require any notifications to go out, and the City must follow the law equitably for all businesses seeking permits. (This is the same reason no traffic study was required.) On the other hand, if OBRC wanted to have the facility open for extended hours (before 7:00 am or after 10:00 pm), for example, then they would need to apply for a conditional use permit, and that would have triggered a notification to neighboring property owners. Ernie noted that an ongoing and frustrating problem in this NAC is that so many properties are next to unincorporated areas or county areas, making jurisdictional concerns and differences difficult for the average citizen. This is a similar issue to the one faced when Walmart put in its Apple Way location; because it was a grocery store going into a location that had previously been a grocery store, no notification process was triggered. However, Walmart did ask for a conditional use permit for extended hours, which created the need for them to have a public meeting. Scott Whyte noted that OBRC's permits have already been processed and they have met the conditions required by City code (such as using lighting techniques that shield light from neighboring properties). One person noted that he had been working with the City for four months to have a public process where these issue could be discussed, claiming that neither the City nor the applicant would agree to this process.

Scott explained that there was no requirement for a public hearing because the usage was not changing. This is City law. OBRC is going into an existing building. They are remodeling the building and doing some minor landscaping. They will have to meet specific design and lighting standards, but all of this is handled, by law, through an administrative review process at the City. This facility falls under the permitted use for its zone (commercial), so they must be treated the same as any other facility that would fall under permitted use. One person questioned how this could be considered permitted use when this is the first facility of its kind to be located in Beaverton. Scott noted that this usage is already done in commercial use areas, such as the stand-alone bottle return area at Fred Meyer. Businesses change owners all the time in Beaverton; when the usage does not change, no notification or public hearing is required.

OBRC's attendance at this NAC meeting was something they chose to do, not a requirement like other types of public meetings (as Ernie had noted at the beginning). Cherylyn noted that applications for these facilities go through OLCC, and those applications are always open for public comment. Comments are reviewed and considered by OLCC before they approve a site. Once a site is approved, OBRC follows the process outlined by the city in which they are locating the facility.

Ernie noted that if one has a concern about the City's development code, which is currently under review, contact the City Planning Department or Traffic Department for more information.

Useful links:

Washington County and City of Beaverton Community Development Needs questionnaire:
<https://www.surveymonkey.com/r/CDBGNeedsSurvey>

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City of Beaverton Development Code:
<http://www.beavertonoregon.gov/463/Development-Code>

The City's survey about the development code is now closed, but this link gives you more information and an e-mail address to send more feedback:
<http://www.beavertonoregon.gov/1165/Custom-Survey>

Guest Speaker: Holly Thompson, candidate for THPRD Board of Directors. Holly lives in Beaverton and is a heavy user of THPRD facilities and parks; in fact, this was part of the reason she chose to move to Beaverton. She is running for the board because she noticed that no one looks like her on the board; there are no women, no moms. She believes that we have an amazing park district, but wants to spotlight some issues, particularly affordability and equitable access. She works for the City of Beaverton and wants government to be open, transparent, and good at communication and will bring that perspective to the THPRD board. She does not have a passion for only one particular area (such as nature parks or rec centers); she wants to represent all areas, all age groups. She will be part of the special election held on May 16th. She noted that these special elections can be neglected but encouraged everyone to vote, even if they're not voting for her. More information about Holly can be found at <https://ThompsonforTHPRD.com>.

Treasurer's Report: We had one deposit from the City: \$545.00 for volunteer activities. Our current checking account balance is \$6,306.85.

BCCI Report: The last BCCI meeting was an update to City Council, where they presented a review of what they did last year. They sponsored and/or organized several different events, including the Voters' Forum, three meetings about the new Public Safety Center, two neighborhood cleanups; they and partnered with Visioning Committee to adopt their priorities; and they continue to support the community booth at the Farmer's Market, which allows groups to create awareness and earn some money. BCCI is taking over matching grant program; with this program, the City will match volunteer hours for improvements in your neighborhood. Contact your NAC leaders if you have any ideas for improvements.

Old Business:

McKay Elementary book club update: Sherry procured over 75 books, with some more at the Harmon Swim Center. Books or gift cards are accepted.

Consent Agenda

Approval of minutes (October and February (January was canceled due to weather)): Sherry moved to accept the consent agenda. Michelle seconded. The motion passed 5-0.

New Business:

Ernie proposed that the Denney Whitford/Raleigh West NAC will take over sponsoring a ten-gallon garbage can at two TriMet bus stops on Scholls Ferry Road near Harmon Swim Center. Ernie and Tracy both use these stops regularly and there is no trash can and a trash problem there. TriMet will put out the cans, but they must be sponsored by a group, who agrees to empty them. Because an individual cannot sponsor them, Ernie would like the NAC to be the sponsor, and then he will take on the responsibility of emptying the can. (There was no vote taken on this; we will revisit at the next meeting.)

Miles suggested a matching grant for an iPad with a data service package and upgrade to the WebEx account so that we can establish the process for allowing people to attend NAC meetings remotely (or

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NAC: Denney Whitford / Raleigh West

watch recording after the fact). The grant should cover the cost of equipment and one year of data; after that, we will need to decide whether to continue the program or not.

Sherry asked whether any NAC was using a PO box so we don't lose mail when the person on our bank account moves. Miles said that we could have checks held at the City, but someone would have to go pick it up.

Question: Why there are sidewalks on Denney Road west of Hwy 217 and the speed limit is 35 mph, while east of 217 there are no sidewalks and the speed limit is 30 mph; the east side is considerably narrower. Ernie explained that speed limits are set by ODOT; the City technically can't change speed limit. However, concerns about speed limits can be brought before the Traffic Commission; if they agree that there are good reasons to change the speed limit, then they will make a recommendation to ODOT. Ernie also noted that the area from BelAire east to Scholls Ferry Road is on the capital improvement plan and may eventually get sidewalks or other improvements. The work is not scheduled for 2017-18, but it's on the radar.

Question: Does the City have an input on the route TriMet chose for its new bus line from Washington Square down Denney Road to the Beaverton Transit Center? Scott Whyte (noting this was not his area of expertise) commented that usually TriMet and the City work together. They gather information from surveys and other community feedback but also consider that the City has made getting around without a car is a key issue. Ernie noted that this new bus line addresses TriMet's "last mile" program; TriMet has found that if someone has to walk more than ½ a mile to transit, they won't use it. So TriMet is reviewing areas without service (such as the Vose neighborhood along Denney Road) and trying to fill in those gaps. This new bus line is not a direct line from Washington Square to Beaverton Transit Center; there will be stops along Denney Road. This may create traffic backups. People were encouraged to contact TriMet with their concerns.

Meeting end time: 8:34

From: Cathy Jansen
Sent: Friday, June 15, 2018 4:53 PM
To: Anna Slatinsky
Subject: FW: OBRC on Beaverton Hillsdale

OBRC

-----Original Message-----

From: Mailbox Citymail
Sent: Friday, June 15, 2018 4:26 PM
To: Betty Bode <bbode@beavertonoregon.gov>; Cate Arnold <carold@beavertonoregon.gov>; Lacey Beaty <lbeaty@beavertonoregon.gov>; Marc San Soucie <msansoucie@beavertonoregon.gov>; Mark Fagin <mfagin@beavertonoregon.gov>
Cc: Joyce Barnard <jbarnard@beavertonoregon.gov>; Cathy Jansen <cjansen@beavertonoregon.gov>
Subject: FW: OBRC on Beaverton Hillsdale

-----Original Message-----

From: Phil Donovan [<mailto:phil@nwpublicaffairs.com>]
Sent: Thursday, June 14, 2018 4:04 PM
To: Mailbox Citymail <citymail@beavertonoregon.gov>
Subject: OBRC on Beaverton Hillsdale

I fully support the the OBRC on Beaverton-Hillsdale Highway and urge the Council to reject NIMBY-ism at its worst.

Before OBRC, I threw all my redeemables into the recycling bin. Since the OBRC located on Beaverton-Hillsdale and I learned about the "green bag" program, every redeemable in my house now goes into the proper recycling stream. This is good for the environment and my household economics.

I reside at the intersection of Shattuck and Beaverton-Hillsdale. Beaverton-Hillsdale is "Main Street" for my family. My wife practice at Yoga Sculpt, we shop at New Seasons and we drink at Raccoon Lodge. We go up and down that road and find the OBRC location to be very convenient. I'll also take a moment to share my perspective that OBRC has the location appropriately sized and staffed. When I first visited over a year ago, there were some long lines. Since, I never have a problem finding a parking spot or had to stand in line. Sure, the place is always bustling, but that's good for the environment.

I've been pleasantly surprised by the efficiency and effectiveness of OBRC. Please don't screw that up. Thank you.

Regards,

Phil Donovan
5353 SW Martha Street
Portland, OR 97221



To: Beaverton City Council

From: John Andersen, President, Oregon Beverage Recycling Cooperative (OBRC)

Re: Background information for June 19th hearing

As the Beaverton City Council considers the appeal to the Director's decision on the Beaverton BottleDrop, I feel it is important to provide some background on the issues at hand, including the structure of OBRC, how BottleDrop was developed, and why it is important to remain open at the current site.

Oregon Beverage Recycling Cooperative is a member-owned, not-for-profit cooperative corporation that collects and processes nearly all beverage containers sold and redeemed in Oregon. Currently, nearly 9 in 10 eligible beverage containers purchased in Oregon are returned for a refund, and in 2018, OBRC will process well over a billion and a half containers. We transport containers from every corner of the state, work with retailers to maintain redemption equipment, provide customer-focused retail operations like BottleDrop, and perform industrial processing in five processing plants. The entire process employs about 400 people and is funded and managed by the beverage and grocery industries at no cost to taxpayers. This is a not for profit, state mandated operation that the beverage and grocery industries pay into every year.

OBRC and its predecessor organizations have existed in some form since the Bottle Bill was passed in 1971. For the first 38 years, bottle returns were simply carried out by stores. However, the traditional model for redeeming containers changed in 2009 with the addition of bottled water. With water, the volume of containers went up, and the old models of funding the system and collecting the containers needed to change. Stores were no longer able to handle bottle collections in a way that provided the necessary ease and convenience for all customers that the Bottle Bill needed to stay relevant and functional.

For the Bottle Bill to work, Oregon needed a way to redeem containers that allowed for both high-volume redeemers as well as casual, family-oriented redeemers to quickly and conveniently get their deposit back. In 2011, the Oregon Legislature authorized the creation of BottleDrop style redemption centers, at the request of the beverage industry, grocery stores, and environmental groups. They concluded that redemption centers could provide more and better functioning machines than grocery stores, allowing for faster returns. In addition, redemption centers would provide dedicated customer service, on-site trouble shooting, and the option for customers to participate in the "green bag" program. The green bag account program, now a staple of container return for 240,000 Oregon households, could not exist without redemption centers. It has allowed the Bottle Bill to remain a part of the modern family's busy life, and provides the backbone for programs like BottleDrop Give, that support hundreds of non-profits around the state.

Today, after the success of the early pilot redemption centers, there are now 23 BottleDrop Redemption Centers, with more on the way. OBRC has committed to the Oregon Legislature to build 45 centers, providing convenient container returns in every community. BottleDrops are part of the community they are located in, and our customers reflect that community. Most BottleDrops are used primarily by nearby residents. For example, the Beaverton BottleDrop is used mainly by residents living in Beaverton, unincorporated Washington County, and parts of southwest Multnomah County.

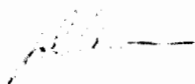
OBRC purchased the site in Beaverton after an extensive and years-long search for available property within the state mandated radius of Beaverton grocery retailers. We need sites with sufficient parking, ample space inside, access for picking up material, and proximity to grocers. Redemption centers are funded in part by grocery stores, and for the Beaverton site, we have 25 separate contracts with retailers in the area who have made an investment in this BottleDrop. In addition to the fact that this location is convenient for customers and meets our space and property needs, we quite simply cannot move or cease operations even if we wanted to. Doing so would violate 25 separate contracts with retailers that compel us to provide a nearby redemption service for them.

Because these centers provide an important community service, and because we value our customers and the neighborhood, we do everything in our power to be good neighbors. At Beaverton, we have limited our operational hours to be considerate of any impacts on the neighborhood. We have invested in extra sound protection, and are exploring additional fencing options to satisfy neighbor concerns. We also have trained staff and 24/7 live camera feeds that help us deal with any situation that might arise on site. Like any grocery store or Starbucks, we can't control who comes in the door as a customer. However, we can, and do, respond quickly to any incident. In addition, we will "trespass" any individual who violates our code of conduct and we can keep that person from using our services in the future. We are eager to continue to engage with the community to find out how we can be a good neighbor.

We take our responsibility to the public, to our customers, and to Oregon's environment seriously. The legislature has entrusted us with the future of Oregon's landmark Bottle Bill, and BottleDrop is the key to making the Bottle Bill a success. We depend on being part of the community, near our customers, and convenient to retail sites, just as the legislature intended. If the City of Beaverton reverses its decision and decides that we are not a commercial use, it could have a ripple effect across communities in Oregon, and a profound impact on the Bottle Bill statewide. If there are clarifications or changes parties desire to the Bottle Bill, we would be happy to have those discussions in the legislature, where the League of Oregon Cities, environmental advocates, retailers, and others can weigh in.

In the meantime, please look to us as partners in Beaverton. We are ready to help, and we value being part of the community.

My best,



John Andersen

President



HATHAWAY LARSON

Koback · Connors · Heth

June 18, 2018

VIA EMAIL

City Council
City of Beaverton
12725 SW Millikan Way
Beaverton, OR 97005

Re: Oregon Beverage Recycling Cooperative - 9307 SW Beaverton Hillsdale Hwy
Appeal of Director's Interpretation Decision
Our Client: Glenwood 2006, LLC

Dear Mayor Doyle and City Councilors:

This firm represents Glenwood 2006, LLC ("Glenwood"), the owners of the Laurelwood Animal Hospital and the Oregon Veterinary Specialty Hospital located adjacent to the above-referenced Oregon Beverage Recycling Cooperative ("OBRC") beverage container redemption center ("BCRC"). Glenwood was the party that appealed the City's original approval of the BCRC in 2017, in which LUBA remanded the approval to require the City to consider if the BCRC is an allowed use in the community service ("CS") zone pursuant to the required public process. Glenwood is also one of the parties that appealed the Director's Interpretation Decision, dated April 30, 2018 (the "Decision"), approving OBRC's Director's Interpretation Application (the "Application"). We are submitting this letter to provide the City Council a summary of the key issues it should focus on for purposes of the appeal and to respond to new arguments and issues raised in OBRC and the City staff's recent written response to the appeal.

A. The City Council should not be sympathetic or lenient on OBRC because OBRC chose to commence operating the BCRC when it knew the use issue was still an open issue on appeal.

This case is highly unusual because the BCRC operation that is being reviewed on appeal to determine if it is an allowed use has already been operating for well over a year. Typically, the City determines if the proposed use is allowed in the underlying zone *before* the applicant is allowed to commence operating. In this case, OBRC elected to move forward with the project while the LUBA appeal was pending knowing full well that if it lost the appeal it would be required to cease operating until it obtained the required approval from the City. Unfortunately, after LUBA issued its decision the City elected not to enforce its code and has allowed OBRC to

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operate in violation of the code for the last nine months while the Director's Interpretation application is still being processed.¹

Glenwood wants to make sure that the City Council is not persuaded to approve the Application because OBRC has already made the investment in this location and started the operations. Glenwood raised concerns about the authority of OBRC to operate this type of facility from the very beginning, in November of 2016, and OBRC chose to ignore those concerns. OBRC knew that it was taking a risk by moving forward with the project while the LUBA appeal was pending. OBRC should not be rewarded or protected because it chose to take this risk. If anything, the City Council should be sympathetic to Glenwood and other surrounding neighbors who have been forced to live with the BCRC for over a year even though it still does not have the required final approval from the City.

B. The City Council is interpreting the code based on the existing code, not making a policy decision regarding whether or not BCRC facilities should be allowed in the City.

OBRC would like the City Council to view this appeal as a question of whether or not recycling and OBRC facilities are a good thing and should be allowed in the City, but this policy question is not relevant on appeal. Glenwood and the other parties strongly support recycling and are not opposed to the BCRC facilities, they just object to allowing BCRC facilities in the CS zone because the Beaverton Development Code ("BDC") prohibits it. The City encourages and supports a number of businesses and uses that benefit the community, but it does not allow them to operate anywhere in the City regardless of the BDC. To the contrary, the City uses the BDC to determine which zoning districts are appropriate for the various types of uses and what type of requirements must be satisfied to allow them in each of these zoning districts.

That is the sole issue in this appeal – does the BCRC qualify as an allowed use in the CS zone based on the existing language in the BDC. If the BDC does not allow these types of facilities in the CS zone, the City must deny the Application regardless of how it feels about recycling or the BCRC facilities. As explained in Section C below, BCRC facilities are allowed in other zones and the City Council has the option of amending the BDC to allow these facilities in a broader range of zoning districts.

C. Denying the Application will not preclude BCRC facilities in the City.

If the City Council denies the Application, it will not preclude OBRC from operating BCRC facilities in the City. Recycling Centers are currently allowed as conditional uses in the Industrial ("IND") zoning district and there are IND zoned properties in the City that could accommodate the BCRC. Based on OBRC's own information, it currently operates three BCRC

¹ Glenwood repeatedly asked the City to enforce the BDC and require OBRC to cease operating until it obtained the required approval, but the City refused to do so even though BDC prohibits operating without the required permit. BDC 10.15.1. OBRC's claim that it can operate in violation pursuant to a Voluntary Compliance Agreement is irrelevant because OBRC was never required or actually signed such an agreement. The City staff's reliance on ORS 227.181 is puzzling since that statute says *nothing* about allowing applicant's to operate in violation of the code while they attempt to address LUBA's remand.

facilities in industrial zones in other jurisdictions (Oregon City, Redmond and Medford) so it clearly is capable of operating these facilities in industrial zones. Letter from Garrett Stephenson, dated June 11, 2018, Enclosure 2.

Additionally, the City Council can initiate a legislative amendment process to amend the BDC and determine which zoning districts BCRCs should be allowed. As noted in the Memorandum from Michael Neff, dated June 15, 2018, several other cities amended their development codes to determine which zones were appropriate for BCRC facilities. This option would not only clarify where BCRC facilities are allowed and avoid these types of disputes, but more importantly it would provide an opportunity for all citizens to weigh in on the proposal through the legislative code amendment process.

D. Approving the Application will allow future BCRC facilities to be sited virtually anywhere in the City with no public notice, input or process.

The City Council's decision in this case will not only allow this particular BCRC to remain at this location, it will also determine where future BCRC facilities are allowed and what process will be required. This is an important consideration because OBRC has already indicated that it will be proposing multiple additional BCRC facilities in the City in the near future.

At a minimum, BCRC facilities would be allowed as a permitted use in every Commercial zoning district and the Office Industrial District because the uses the Decision cites as being similar to the BCRC (Service Business/Professional Services, Eating and Drinking Establishments and Retail Trade) are permitted uses in all of these zoning districts. BDC 20.10.20 & 20.15.20. Because these BCRC facilities would be considered permitted uses, they would be allowed in these zoning districts without any public notice, input or process. Given how much controversy this particular BCRC generated from the surrounding community after it began operating, the City Council will need to explain to other affected communities why it believed that no public input or process was necessary to determine where future BCRC facilities are located.

BCRC facilities would also be allowed as conditional uses in the IND zone and arguably as conditional uses in several Residential zones under the reasoning in the Decision. BDC 20.05.20 & 20.15.20. Since the Decision determined the similarity of the uses based predominately on impacts, BCRC facilities would be allowed in these Residential zones because they have similar impacts to the commercial uses allowed in the Residential zoning districts. BDC 20.05.20.

The City Council should not adopt an interpretation of the BDC that would effectively allow these BCRC facilities virtually anywhere in the City without public notice, input or process. Such an interpretation would be particularly troubling given that there has never been a City-wide policy discussion or process regarding the merits of this approach.

E. A recycling business whose sole function is to accept, process, store and transport recyclable material clearly qualifies as a Recycling Center.

It is truly difficult to understand how the City can legitimately conclude that the BCRC facility is not a Recycling Center based on the undisputed nature of its operations. The Director and

OBRC acknowledges that OBRC is a “recycling business,” “BCRC’s use is recycling” and the BCRC furthers the goals of recycling by providing accessible “recycling/redemption centers”. Application Narrative, pp.2-7; Decision, Attachment A, pp.2, 4-5. As we explained in our appeal, the BCRC meets the plain language dictionary, regulatory and industry definitions of a Recycling Center. The BCRC also shares the same core characteristic as *all* of the uses listed as industrial uses in BDC 20.15.20 (Recycling Centers, Salvage Yards and Solid Waste Transfer Stations) – they all exclusively handle some form of waste material. What more could the City possibly require in order for a facility that exclusively accepts, processes, stores and transports recyclable material to qualify as a Recycling Center? Since the BCRC is clearly a Recycling Center, it is prohibited in the CS zone. BDC 10.50.

OBRC acknowledges that “the Redemption Center conducts ‘recycling’,” but claims that is not enough to demonstrate that the BCRC meets the plain language definition of a “recycling center.” Letter from Garrett Stephenson, dated June 11, 2018, p.7. The BCRC is clearly a recycling *center* because recycling is the exclusive purpose and use for this facility. The BDC uses this same common sense and plain language approach in defining other types of “centers.” See BDC Chapter 90 (Definition of Preservation Resource Center, Shopping Center and Transit Center). In fact, it is this exclusive characteristic of a Recycling Center that differentiates it from a Solid Waste Transfer Station – the latter accepts and processes both recyclable and non-recyclable material while a Recycling Center exclusively accepts and processes recyclable material.² Metro Code Section 5.00.010.

Although OBRC originally argued that the City should consider other regulatory definitions when determining the meaning of a Recycling Center (Application Narrative, p.10), OBRC now claims that these other regulatory definitions are not relevant because Glenwood demonstrated that the Metro and Washington County’s definitions of a recycling center clearly include the BCRC.³ Letter from Garrett Stephenson, dated June 11, 2018, p.8. OBRC’s excuse for disregarding these related definitions – definitions from other codes are not binding or relevant – is not only inconsistent with OBRC’s original position but is also inconsistent with the Decision

² It also distinguishes the BCRC from the bottle redemption facilities historically used by supermarkets. The supermarket bottle redemption facilities are accessory or ancillary uses that are part of the larger principal use, the supermarket. The BCRC is a standalone recycling facility that does nothing else. That is why the BCRC is a recycling *center*, while the smaller ancillary supermarket facilities are not.

³ Metro defines a “Recycling drop center” as “a facility that receives and temporarily stores multiple source-separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.” Metro Code Section 5.00.010. Washington County’s definition of a Recycling Center is very similar. Washington County Community Development Code (“CDC”) Section 430-115. Letter from E. Michael Connors, dated May 14, 2018, p.3-4.

because the Director relied on the fact that other local jurisdictions approved BCRCs in commercial zones.⁴ Decision, p.7

OBRC's response to the industry definitions takes the same flawed approach as the Decision – comparing the BCRC to solid waste transfer stations that handle both recyclable and non-recyclable waste. Letter from Garrett Stephenson, dated June 11, 2018, p.7-8. Similar to the Multnomah County regional solid waste facility the Director relied on, Environmentally Conscious Recycling (“ECR”) facility, the Metro South Transfer Station cited by OBRC is a solid waste transfer station. Solid waste transfer stations accept both recyclable and non-recyclable waste and are recognized as separate and distinct uses from recycling centers under both the BDC and the Metro Code. BDC 20.15.20; Metro Code Section 5.00.010. Tualatin Valley Waste Recovery is part of the “Hillsboro Landfill and Tualatin Valley Waste Recovery Facility,” which includes both a landfill and a material recovery facility. Letter from Garrett Stephenson, dated June 11, 2018, Enclosure 7. The Tualatin Valley Waste Recovery Facility website page included with OBRC's material notes that “TVWR has a current recovery rate of about 40%” – which means that only forty percent of the material it receives is recyclable. Letter from Garrett Stephenson, dated June 11, 2018, Enclosure 7. Since neither of these facilities handles exclusively recyclable material like the BCRC, they are not comparable.

Finally, OBRC asserts that the BCRC is not a “Recycling Center” based on the false claim that it “does not involve any actual processing of recyclables, which are simply collected, packaged and moved off-site.” Letter from Garrett Stephenson, dated June 11, 2018, p.2. As illustrated in the Declaration of Gage Bergeron, a former Site Supervisor of the BCRC facilities in Bend and Redmond, there is no question these facilities do significant processing on-site. Memorandum from Michael Neff, dated June 15, 2018, Attachment B. The back-room BCRC operation is like a mini-manufacturing plant with a series of mechanical sorting machines, conveyer belts, crushing machines, augers that perforate or shred material, and other equipment that consolidates the processed material. Glass containers are crushed and the small glass pieces stored in large totes. Aluminum containers are crushed, compiled into large aluminum bricks and stacked on pallets. Plastics are crushed, perforated and/or shredded multiple times and dumped into large bags. The BCRC clearly does some processing on site,⁵ and is not simply collecting, packaging and moving the recyclable material.

⁴ As explained in Mr. Neff's Memorandum, these other local jurisdictions approved the BCRCs in commercial zones pursuant to the specific language in their local codes. Memorandum from Michael Neff, dated June 15, 2018, p.3-8.

⁵ The Metro Code defines “processing” broadly as “a method or system of altering the form, condition or content of wastes,” and includes a broad category of activities such as “separating”, “shredding,” and “pulverizing.” Metro Code Section 5.00.010. As explained above, the BCRC process clearly alters the form or condition of the containers, and includes activities such as separating, crushing, compacting and pulverizing the containers.

F. The Director distinguished the BCRC from a Recycling Center based on arbitrary factors that are not recognized in the BDC or the applicable definitions.

Instead of applying a straightforward plain language definition approach, as required by BDC 10.20.3 and 10.20.6.B, the Director distinguished the BCRC from a Recycling Center based on several arbitrary factors that are not recognized in the BDC or the applicable definitions. The City Council should not adopt this arbitrary analysis because it is inconsistent with the BDC and is deeply flawed.

The Director's claim that the BCRC should not be treated as a Recycling Center because it could mean that any use with recycling activity would qualify as well, including typical recycling by households, offices, schools, parks and restaurants, is a false dilemma. There is a huge difference between uses with incidental recycling activity and a facility that is a recycling business that *exclusively* handles recyclable material. That is why the BCRC is a Recycling Center and these other incidental uses are not. Under the Director's rationale, the Olive Garden would not be a restaurant because households, offices and schools also cook and serve food and therefore could be restricted to only those zones in which Eating and Drinking Establishments are allowed. It is a ridiculous claim.

The Director's claim that the BCRC is not industrial in nature because the operations are conducted in an enclosed building is inconsistent with the BDC and plain language definitions. Nothing in BDC 20.15.20 limits industrial uses to outdoor facilities and several of the listed industrial uses are typically conducted in enclosed buildings - Concrete Mixing and Asphalt Batch Plants; Manufacturing, Fabricating, Assembly, Processing, Packing, and Storage; Laboratory; Warehousing, Wholesale and Distributive Activities; Marijuana Processing; Mail Order Houses. BDC 20.15.20. None of the applicable definitions cited by the parties, including those cited by OBRC, support the theory that an indoor operation cannot qualify as a recycling center regardless of the nature of the operation. This is an artificial distinction with no support.

The Director's conclusion that the scale and intensity of the BCRC, in comparison to other conditional uses in the IND zone, is the determining factor is a radical departure from the BDC and typical zoning approach to regulating uses. As is the case in other Oregon jurisdictions, the City of Beaverton adopted Land Use tables that define which uses are permitted or conditional uses in each zoning district. BDC 10.05.20, 10.10.20, 10.15.20 & 10.20.20. If a proposed use meets the definition of conditional use listed in these Land Use tables, it must be reviewed as a conditional use. The BDC does not provide an exception even if an applicant can demonstrate that the proposed conditional use is smaller in scale, intensity and impact than some of the permitted uses allowed in the same zone.⁶ Not only is this approach inconsistent with the BDC, it would establish a bad precedent that would allow future applicants looking for ways to avoid the stricter conditional use standards to justify a similar exception.

⁶ There are several large, intense and heavy impact uses allowed as permitted uses in the IND and related industrial zones: hospitals, wholesale and retail lumber yards, cold storage plants, major automotive services, bulk fuel dealerships, heavy equipment sales, manufacturing plants and operation centers. BDC 20.15.20.

G. The Director's "more or less" intensity and external impacts test to determine the substantially similar use is inconsistent with the express language of the BDC.

The BDC is clear that in order to qualify as similar to a use permitted in the underlying zone, the proposed use must be of the "same general type" and "substantially similar" to a permitted use. BDC 10.50 allows the Director to authorize a use not specifically named in the BDC if "the use is of the same general *type* and is similar to the allowed uses." (Emphasis added). BDC 40.25.15.1.C.4 provides that: "the use must be *substantially* similar to a use currently identified in the subject zoning district or elsewhere in the Development Code." (Emphasis added). Therefore, the focus of the inquiry is on the type or nature of the use and the required standard is that it be "substantially similar."⁷

The Director specifically rejected these express requirements in the BDC and adopted a completely different test that is not recognized by the BDC. The Decision provides:

"The Director does not believe the inclusion of the word 'substantially' indicates that the BCRC must be of the precise type and nature of an existing business or that the determination of "substantially similar" must rest upon a comparison to a single, other business. Rather, given the general use nature of the CS district, 'substantially' in this context means 'more or less,' where the focus is on the intensity of activity and the external impacts generated by the activity." Decision, p.7.

Not only did the Director determined that the nature of the use being compared is not relevant and that the similarity need only be "more or less," contrary to the express language in BDC 10.50 and BDC 40.25.15.1.C.4, the Director adopted a purely impacts based test that is not mentioned anywhere in the applicable BDC sections. BDC 10.50 and BDC 40.25.15.1.C.4 say absolutely nothing about focusing on the intensity and external impacts of the activity.

OBRC and the staff's sole reliance on the CS zone and Comprehensive Plan purpose statements is erroneous for multiple reasons. The substantially similar test must be governed by the specific code provisions that were adopted to address this particular standard, BDC 10.50 and BDC 40.25.15.1.C.4, not general purpose statements. See ORS 174.020(2); *Lubischer v. City of Hillsboro*, 53 Or LUBA 143, 150 (2006) (specific language in the relevant code provisions controls over the general policy language). The general purpose statements in BDC 20.10.10 are not intended to control which uses are allowed in each zoning district, BDC 20.10.15 is intended to govern the allowed uses. The BDC implements the goals and policies of the Comprehensive Plan, so the BDC provisions are controlling over the broad policy language in the Comprehensive Plan. BDC 10.10.1. Finally, there is *nothing* in the language of these general purpose statements that refers to allowing uses depending on the intensity and external impacts of the uses.

⁷ Webster's Third New International Dictionary defines the term "similar" as "Having characteristics alike: very much alike: comparable . . . alike in substance or essentials" and the "substantially" as "in substantial manner."

H. The BCRC is an intense use that creates significant external impacts.

Even if the City Council were to consider the intensity and external impacts of the BCRC, there is no question that it is an intense use that creates significant external impacts more industrial in nature. OBRC's response focuses exclusively on the "10,000 sq. ft." size of the building because it wants to obscure the intensity of the operation itself. This single BCRC facility processes approximately 80,000 containers per day or 30 million beverage containers per year. And the overall operation consists of a 10,889 sq. ft. building, with a mini-manufacturing plant in the backroom, loading dock and 16,000 sq. ft. parking lot with 41 parking spaces. The BCRC is far larger and more intense than the type of Salvage Yards that is expressly included in the same use category as Recycling Centers.⁸

The BCRC also generates significant external impacts as evident in the strong opposition and numerous comment letters from surrounding property owners. The BCRC is extremely noisy, whether it is the customers dumping cans and glass bottles into carts in the parking lot or the noise generated by the machines crushing cans and glass bottles from 7 am to 10 pm every day. Patrons leave trash and discarded containers on neighboring properties. Used beverage containers obviously generate significant odors - imagine over 30 million of them passing through every year. BCRC patrons and the OBRC trucks generates significant traffic impacts and illegally use Glenwood's parking lot and driveway as a cut-through. There has also been a significant increase in security incidents on Glenwood and other properties in the surrounding area since the BCRC began operating. These are precisely the type of impacts that make the BCRC incompatible with the surrounding commercial and residential uses.

I. The Oregon Bottle Bill does not preempt local zoning codes or authorize BCRCs as commercial uses.

OBRC and the staff erroneously rely on the letter from two Oregon legislators, dated April 11, 2018, to claim that the Oregon legislature did not intend BCRCs to be treated as industrial uses. There are multiple problems with this claim.

The 2011 Bottle Bill did not preempt local zoning requirements as OBRC and the staff appear to be suggesting. To the contrary, OAR 845-020-0020(f) and OAR 845-020-0025(8) specifically require the applicant to demonstrate that the proposed BCRC will comply with the local zoning requirements and the applicable local ordinances. The City's code is the exclusive basis for reviewing the BCRCs zoning compliance.

Neither the applicable statutes nor the administrative rules governing BCRCs even contain the words commercial or industrial, let alone address the specific type of zoning districts these

⁸ The definition of a Salvage Yard provides that "[t]hree or more dismantled or inoperable materials on one lot shall constitute a salvage yard." BDC Chapter 90. Three pieces of dismantled or inoperable materials, which the City deemed to be industrial in nature, pales in comparison to a recycling facility that consists of a 10,889 sq. ft. building, loading dock and a 16,000 sq. ft. parking lot with 41 parking spaces, and processes 30 million containers per year.

facilities are appropriate. Therefore, the 2011 Bottle Bill clearly did not designate these facilities as commercial or determine that they are not industrial.

A post-enactment letter from two of the roughly 90 Oregon legislators that voted on the 2011 Bottle Bill is not relevant legislative history nor reflective of the intent of the Oregon legislature as a whole. Post-enactment statements of legislators are not relevant to legislative intent and carry no legal weight when it comes to discerning the meaning of a statute. *Salem-Keizer Ass'n of Classified Employees v. Salem-Keizer School Dist.* 24J, 186 Or App 1961 P3d 970 (2003). Additionally, the statement of individual legislators is not relevant to the legislative intent of the legislature as a whole. *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009) ([t]he formal requirements of lawmaking produce the best source from which to discern the legislature's intent, for it is not the intent of the individual legislators that governs, but the intent of the legislature as formally enacted into law."); *State v. Shifflett*, 285 Or App 654, 398 P3d 383 (2017)(same).

J. OBRC is raising the homeless issue to distort the real issues in this appeal.

Perhaps realizing the legal problems with the Decision, OBRC's response to the appeals attempts to mischaracterize the appellants' concerns and distort the real issues in this case by claiming that this appeal is really about a broader societal concern with homeless people. OBRC's claims are simply not true. Glenwood and other appellants are primarily concerned that the City allowed the BCRC to be located in the CS zone without any public notice, input or process and thus far has been unwilling to enforce its code notwithstanding the clear prohibition against Recycling Centers such as the BCRC in this zone. To the extent Glenwood and other appellants are concerned about impacts, there are multiple impacts that have created problems, including noise, odor, traffic, parking and security related issues.

To the extent that OBRC is claiming that the safety concerns are aimed at the homeless, that is OBRC's statement not Glenwood and the other appellants. Glenwood and the other appellants are concerned about safety issues related to the criminal activity and drug use that has undeniably spiked since the BCRC opened, not homelessness. Given this correlation, this activity is clearly coming from some patrons of the BCRC.⁹ It is unclear who the problem patrons are, or whether or not they are homeless, but it is their actions in the surrounding area that is creating the problems. These security problems are real and severe, and OBRC cannot disavow its responsibility for these impacts on the surrounding community from its BCRC by dismissing this problem as a mere attack on homeless. Glenwood does not have a problem with the homeless, it has a problem with OBRC who consistently refuses to take responsibility for the impacts of its facility.

⁹ OBRC's claim that there is no evidence these problems are caused by BCRC patrons is wrong. Many residents, businesses and other community members have complained, filed police reports and submitted written comments about problems with some OBRC patrons. The Memorandum from the Beaverton Police Department, dated April 9, 2018, concluded that there has been a significant increase in reportable criminal activity from OBRC's property since the BCRC opened and that increase is greater than the rates of reportable criminal activity throughout the City.

Conclusion

Since Glenwood first found out about this BCRC proposal in November of 2016, it has made a simple request of the City – enforce the BDC and regulate the BCRC consistent with the BDC requirements like it does to every other property owner and applicant. It should have been a simple exercise – the BCRC is clearly a Recycling Center and the City already decided to limit those types of facilities to the industrial zone. OBRC can site the BCRC in the industrial zone or initiate a legislative code amendment process to determine what other zones are appropriate, but it cannot continue to operate the BCRC at this location since it is currently prohibited in the CS zone.

Thus far, the City has been unwilling to adhere to and enforce the BDC. Initially the City chose to ignore obvious procedural requirements and on remand from LUBA it adopted a radical and unsubstantiated interpretation that will effectively allow these BCRC facilities anywhere in the City without any public notice, input or process. Given how much controversy this particular BCRC has created, that type of approach is a recipe for disaster.

We are now counting on the City Council to do the right thing, and interpret and enforce the BDC in a reasonable manner consistent with its plain language. Therefore, we request that the City Council grant the appeals, deny the Application and require OBRC to relocate the BCRC to another property that is properly zoned to accommodate this type of use.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

EMC/mo

cc: Glenwood 2006, LLC